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1 FRIDAY, JUNE 26, 2015 9:09 O'CLOCK A.M.

2 THE CLERK: Criminal 14-826 SOM, United States of  
3 America versus defendant Albert Hee. This case has been called  
4 for Further Jury Trial.

5 Counsel, please make your appearances for the record.

6 MR. TONG: Good morning, Your Honor. Larry Tong --  
7 good morning, ladies and gentlemen. I'm sorry. Larry Tong and  
8 Quinn Harrington for the United States. With us is Special  
9 Agent Greg Miki and Christina Sorely of the Department of  
10 Justice. Good morning.

11 THE COURT: Good morning.

12 MR. TOSCHER: Good morning, Your Honor. Good  
13 morning, ladies and gentlemen. Steven Toscher for defendant  
14 Albert Hee, who is present with me in court, and Lacey Strachan  
15 and Kurt Kawafuchi.

16 THE COURT: Okay. Good morning. You can sit down.  
17 And who is the government calling at this time?

18 MR. TONG: The government calls Charlton Hee.

19 THE COURT: Charlton Hee. Okay.

20 And just to let the jurors know, I'm not sure exactly  
21 what the time will be, but we are expecting to end early today.  
22 We'll just have to see how things proceed, but I don't think  
23 we're expecting that we will fill the day until 4:00.

24 Am I correct?

25 MR. TONG: Yes, Your Honor.

1 THE COURT: Okay. We'll see how it goes, but that's  
2 the expectation.

3 (Witness photographed.)

4 THE CLERK: Please raise your right hand.

5 (Witness sworn.)

6 THE CLERK: Thank you. Please be seated.

7 Please state your name and spell your last name.

8 THE WITNESS: Charlton E-ola-koa-kupa'a-i-ke-one-  
9 kulaiwi Roylo Hee. Last name is Hee, H-e-e.

10 DIRECT EXAMINATION

11 BY MR. TONG:

12 Q Good morning, Mr. Hee.

13 A Good morning.

14 Q We normally ask witnesses to spell their last name, but in  
15 this case could you kindly spell your Hawaiian name.

16 A Okay. E-o-l-a-k-o-a-k-u-p-a-'okina-a-i-k-e-o-n-e.

17 THE COURT: Okay.

18 THE WITNESS: K-u-l-a-i-w-i.

19 BY MR. TONG:

20 Q And do some people know you as Kupa'a?

21 A That's correct.

22 THE COURT: It just so happens that in this courtroom  
23 you have a court reporter and a law clerk who had no trouble  
24 with your middle name at all. Go ahead.

25 THE WITNESS: That's encouraging.

1 MR. TONG: I'll take the heat for that, Your Honor.

2 Q And I gather you live here on O'ahu; is that correct?

3 A Yes.

4 Q And could you tell us how old you are.

5 A I am 25, 26. I'm going to be 26 in August.

6 Q Without giving the specific date could you tell us the  
7 year in which you were born.

8 A 1989.

9 Q And I want to ask you a little bit about your family  
10 members. Who is your father?

11 A My father is Albert Hee.

12 Q And you see him in court today, I assume.

13 A Yes, I do.

14 Q Is he the individual standing up?

15 A Yes.

16 Q Thank you. And who is your mother?

17 A My mother is Wendy Hee.

18 Q And her -- she goes by Wendy Roylo Hee also; is that  
19 correct?

20 A Yes, that's correct.

21 Q And who is your father's father, your paternal  
22 grandfather?

23 A My father's father is Charles Hee.

24 Q And do you presently reside with your grandfather?

25 A Yes, I do.

1 Q And what does Charles Hee, your grandfather, do for a  
2 living?

3 A He's retired. He used to work at the Board of Water  
4 Supply.

5 Q And how long has he been retired?

6 A Somewhere around 20 years, I believe.

7 Q Now, do you have any siblings?

8 A Yes. I have two older sisters.

9 Q Which -- what's the name of the oldest sister?

10 A My eldest sister is Adrianne Ho'oulu-no-na-lani Roylo Hee.

11 Q In light of the court's comments, I'm not going to ask you  
12 to spell that. Does she go by Ho'o?

13 A Yes.

14 Q And how much older is she than you?

15 A I believe three years.

16 Q You said you have a second sister?

17 A Yes.

18 Q What is her name?

19 A That's Breanne Ehu-kai-o-liko-i-ka-makani Roylo Hee.

20 Q Does she go by Liko?

21 A Yes.

22 Q And how much older than you is she?

23 A I believe she's two years older than me.

24 Q Now, let's talk a little bit about you. Tell us where you  
25 went to high school.

1 A Attended Kamehameha Schools, Kapalama.

2 Q I'm sorry. When did you graduate?

3 A 2008.

4 Q And what did you do after graduating from Kamehameha?

5 A I attended Santa Clara University.

6 Q Okay. And for what period of time did you attend Santa  
7 Clara University?

8 A From the fall of 2008 to the spring of 2012.

9 Q Did you receive a degree?

10 A Yes.

11 Q What was the degree in?

12 A I received a Bachelor's of Science in environmental  
13 science, and I completed all credits for a Bachelor's of Arts  
14 in studio art.

15 Q Let's talk about each one. What is environmental science?

16 A So environmental science, as opposed to environmental  
17 studies, is more of the hard sciences; so ecology,  
18 conservation, biology, remediation. Environmental studies is  
19 more the environmental law, environmental policy.

20 Q Okay. And you mentioned that you also had a degree in  
21 studio art; is that correct?

22 A Yes, that's correct.

23 Q And what kind of studio art did you study?

24 A I focused mainly on three-dimensional; so sculpture,  
25 ceramics.



1 THE COURT: Can you get a little closer to your  
2 microphone. Thank you.

3 MR. TONG: You can also pull it closer to you, if  
4 that would be easier.

5 THE WITNESS: That's okay.

6 BY MR. TONG:

7 Q So you focused on three-dimensional things; correct?

8 A Yes.

9 Q Just so we all understand, what would a two-dimensional  
10 type of art be?

11 A So drawing, painting, computer arts.

12 Q So the three-dimensional would have depth.

13 A Yes.

14 Q And were you a full-time student when you attended Santa  
15 Clara University?

16 A Yes.

17 Q And when did the school year start and when did it end?

18 A So we were on quarters; so I believe it started in  
19 September, and it would end around June.

20 Q And by "quarter," that means there were three terms for  
21 each academic calendar year; is that correct?

22 A Yes, that's correct.

23 Q So there would be one in the fall; right?

24 A Yes.

25 Q One in the winter?

- 1 A Yes.
- 2 Q And one in the spring.
- 3 A Yeah.
- 4 Q And the fall term would be September to when?
- 5 A September until Christmas break; so December.
- 6 Q And then when would the winter term be?
- 7 A Winter term was January till spring break, I believe; so
- 8 it's January to March.
- 9 Q Okay.
- 10 A Something like that.
- 11 Q And how about spring term?
- 12 A Spring term was March to June.
- 13 Q And each year you would attend all three terms; correct?
- 14 A Yes.
- 15 Q What would you normally do during your four years at Santa
- 16 Clara when there was a break, such as Christmas or summer?
- 17 A I would usually return home.
- 18 Q How many of your summers did you return home?
- 19 A So I stayed up one summer for summer school. So at least
- 20 three. I believe three.
- 21 Q Okay. And when you returned home during breaks, who would
- 22 pay for your airfare?
- 23 A I usually paid for my airfare.
- 24 Q And where would you get the money to pay for the airfare?
- 25 A Out of my personal savings account.

1 Q And were you earning money at the time you were attending  
2 Santa Clara University?

3 A Yes, I was.

4 Q Okay. And we'll get back to that in a minute.

5 Let's talk about your tuition.

6 A Okay.

7 Q Who paid for your tuition while you were a student at  
8 Santa Clara?

9 A So I believe it was one of my father's companies.

10 Q You did not personally pay for it; correct?

11 A No.

12 Q And how did you learn that one of your father's companies  
13 was paying for your college tuition?

14 A So my sophomore year there was a discrepancy in the  
15 payments. I was receiving scholarships from the school,  
16 multiple scholarships, and there was an overpayment on the  
17 account. And me not knowing much about where the tuition was  
18 coming from, I asked the bursar's office to send the check back  
19 to my parents' house in Kailua. And when the check came to the  
20 house in Kailua, my mother had given me a call to ask what the  
21 check was for and why the school was sending me money.

22 Q And what was that check for?

23 A Again, it was a surplus on the account.

24 Q Okay. Do you recall what caused the surplus?

25 A So the bursar's office, they -- I don't know if it's

1 intentional or what, but the scholarship money would kick in  
2 after you make the initial payment; so it was always a surplus.  
3 And I guess the accountants or whoever was paying or  
4 responsible for sending the check didn't take into account the  
5 scholarships.

6 Q Okay. I want to see if I got this straight. So one of  
7 your dad's companies paid the tuition; correct?

8 A Yes.

9 Q And then you learned you were eligible for a scholarship.  
10 Was it for art?

11 A So that's a separate scholarship that I earned or that  
12 started kicking in my junior and senior year. Heading in my  
13 freshman year, I was receiving a scholarship based on my  
14 ethnicity and, I believe, my academics.

15 Q And when the scholarship kicked in, it created an  
16 overpayment on your account.

17 A Yes.

18 Q Which caused you to call your mom.

19 A Yes.

20 Q And that's how you found out that one of the companies was  
21 paying your tuition; correct?

22 A Yes.

23 Q And what did you do with the surplus that Santa Clara was  
24 applying to your account?

25 A Nothing. We let the check sit, and the amount was

1 credited back into my -- into my account for the next semester.

2 Q Okay. Now, Mr. Hee, where did you live while you were a  
3 student at Santa Clara University?

4 A At a house off campus.

5 Q Okay. And was the address 386 Monroe Street in Santa  
6 Clara?

7 A Yes.

8 Q And let me direct you to the little white binder to your  
9 left. It has your name on it. And if you could kindly open  
10 it, there are some pictures that are marked -- there are some  
11 tabs. You see the tabs?

12 A Yes.

13 Q And underneath the tabs are various pictures; is that  
14 correct?

15 A Yes.

16 Q All right. And each picture has a little sticker there  
17 with a number. It says 16 and then an alpha designation. Do  
18 you see that?

19 A Yes.

20 Q I want to ask you to look at three pictures: 16B, as in  
21 boy; 16C, as in Charlie; and 16D, as in David.

22 A Okay.

23 Q Have you reviewed those three pictures?

24 A Yes.

25 Q And what do they show?

1 A They show the front porch before the fence and after the  
2 fence.

3 Q I think I kind of asked a bad question. Do those  
4 pictures -- are those pictures of the house you lived in while  
5 you were a student at Santa Clara?

6 A Yes.

7 Q All right. And do they fairly and accurately depict the  
8 general appearance of the house?

9 A Somewhat, yes.

10 Q Well, the structure --

11 A Yes. Yes.

12 Q -- is fairly depicted; correct?

13 A Yes.

14 MR. TONG: We would ask that Exhibit 16B, C, and D be  
15 received.

16 MR. TOSCHER: No objection, Your Honor.

17 THE COURT: All right. Those three exhibits are  
18 received.

19 MR. TONG: And may we see Exhibit 16B, please.

20 Q We're going to put it up on the screen, Mr. Hee. You're  
21 free to look at the screen or the binder.

22 A Okay.

23 Q And there's, actually, two houses in this picture. Which  
24 of the two did you live in?

25 A It would be the one on the left.

1 Q So where my laser pointer is; is that correct?

2 A Yes.

3 Q And can we see Exhibit 16C, please. And is this a picture  
4 of the front of the house?

5 A Yes.

6 Q And you sort of made a -- your body language suggested  
7 there might have been some differences in the appearance from  
8 when you lived there and how it appears here; correct?

9 A Yes.

10 Q Tell us, generally, the differences.

11 A The yellow construction tape.

12 Q Okay. So it was a more finished product when you lived  
13 there; is that correct? There was no construction tape like  
14 that.

15 A So I made that face because I -- I worked on the house as  
16 I lived there, and I don't remember doing that.

17 Q Okay. Tell us, generally, the layout of the house.

18 A So the front left is a -- I would describe it as a game  
19 room.

20 Q Before you go on, when you say "front left," do you mean  
21 here?

22 A Yeah, first floor.

23 Q So as the jurors and we are looking at it on our left.

24 A Okay. Yes.

25 Q So the first floor on the left would be a game room?

1 A Yes. And we converted that into a bedroom.

2 The first floor on the right was a dining room. That  
3 was more of a storage area. As you go into the house, there's  
4 a staircase that goes up to the second floor. If you travel  
5 back further in the first floor, you have the kitchen on the  
6 right, have the living room in the back right corner.

7 Q Okay.

8 A You have -- if you go under and around the stairway,  
9 there's a bathroom and a washing room; so washing machine,  
10 dryer, sink. There's also a computer room that we converted  
11 into a bedroom.

12 You go upstairs.

13 Q Let me stop you there. Let's stay on the downstairs for a  
14 moment. You sound like an architect, and I'm trying to keep up  
15 with you.

16 A Sorry.

17 Q No, no. That was meant as a compliment.

18 So you said that there was a computer room on the  
19 first floor; correct?

20 A Yes.

21 Q And you converted that to a bedroom.

22 A Yes.

23 Q There was also a game room on the first floor; correct?

24 A Yes.

25 Q And that was converted to a bedroom.



1 A Yes.

2 Q During the time you lived there.

3 A Yes.

4 Q Were there any other bedrooms on the downstairs floor?

5 A No.

6 Q Okay.

7 A No. Sorry.

8 Q Now, let's go upstairs, and tell us what's upstairs.

9 A So immediately after you come off the flight of stairs,  
10 ahead of you is the master bedroom, which included a bathroom  
11 and a closet. As you come towards the front of the house, the  
12 front right is a bedroom. Front left is also a bedroom.  
13 Between the front left and the back of the house is a bathroom  
14 and then another bedroom.

15 Q Okay. So there were a total of how many bedrooms on the  
16 upstairs level?

17 A That would be four.

18 Q So four upstairs and two downstairs.

19 A Yes.

20 Q Okay. Now, let's go to Exhibit 16D, please.

21 Mr. Hee, I'm going to direct your attention to the  
22 structure that appears at the end of the driveway. Do you see  
23 that?

24 A Yes.

25 Q And what is that?

1 A So that's 388 Monroe Street.

2 Q And that's part of the same property; is that correct?

3 A Yes.

4 Q And is that like a separate structure?

5 A Yes. It's a one-bedroom, one-bathroom. It's a cottage.

6 Q Okay. Is that almost like a guesthouse or 'ohana housing  
7 as we might know it here?

8 A Yes.

9 Q Did it have its own kitchen facility?

10 A Yes.

11 Q So someone could actually live there separately, if they  
12 wanted to.

13 A Yes.

14 Q And was there also a garage?

15 A Yes. So between -- if you head down the driveway, between  
16 the two structures is a garage.

17 Q Okay. Could you take a look at a few other pictures that  
18 are in front of you in the 16 series. Take a look at -- please  
19 direct your attention to Exhibit 16G, as in golf, and 16H, as  
20 in hotel.

21 Do you see those two pictures, Mr. Hee?

22 A Yes.

23 Q Do those two pictures fairly and accurately depict the  
24 appearance of the guesthouse in the back and the backyard?

25 A Yes.

1 MR. TONG: We would ask that 16G and H be received,  
2 please.

3 MR. TOSCHER: No objection, Your Honor.

4 THE COURT: They are received.

5 MR. TONG: All right. And if we can look at Exhibit  
6 16G, please.

7 Q Mr. Hee, is this the guesthouse that you were just  
8 describing at the back of the property?

9 A Yes.

10 Q With the one bedroom.

11 A Yes.

12 Q And separate kitchen facility --

13 A Yes.

14 Q -- right?

15 And may we see -- well, there's a structure to the  
16 left of this guesthouse. What is that?

17 A That would be the garage.

18 Q And if we can take a look at 16H, please.

19 What does this picture show?

20 A This is the complete back of the property or the lot, and  
21 that's the backyard of the smaller house.

22 Q Now, did you live in that house for the entire four years?

23 A Yes, the 386.

24 Q Okay. And so we understand, 386 is the main house in  
25 front; is that correct?

1 A Yes.

2 Q And 388 is the guesthouse in the back; correct?

3 A Yes.

4 Q And without showing the picture, is it true there are two  
5 mailboxes in front of the property?

6 A Yes.

7 Q One for each of the units; correct?

8 A Yes. Correct.

9 Q All right. Now, you stayed in Santa Clara for about four  
10 years plus; correct?

11 A Yes.

12 Q And did you become generally familiar with the area  
13 surrounding the house?

14 A Yes.

15 Q All right. Could you take a look at Exhibit 16A, as in  
16 alpha.

17 A Okay.

18 Q And does that exhibit generally show the location of the  
19 house and the surrounding streets?

20 A Yes, it does.

21 MR. TONG: We would ask that Exhibit 16A be  
22 received.

23 MR. TOSCHER: No objection, Your Honor.

24 THE COURT: It is received.

25 BY MR. TONG:

1 Q And if we can put that up on the screen, please.

2 And maybe we can -- this is like an aerial view of  
3 the surrounding area; correct, Mr. Hee?

4 A Yes.

5 Q And this is Monroe Street where your house was located; is  
6 that correct?

7 A Yes.

8 Q And the arrow points to where your house was; is that  
9 correct?

10 A Yes.

11 Q Now, the map seems to indicate that Santa Clara University  
12 is a little higher on the map to the right; is that correct?

13 A Yes.

14 Q And is that where the university was located?

15 A Yes.

16 Q And when you attended Santa Clara University, how would  
17 you generally get from the house to school?

18 A Skateboard or walk.

19 Q Okay. All right. If we can take the exhibit down.

20 Okay. Now, who owned the house that we've just been  
21 looking at?

22 A I believe Waimana.

23 Q And Waimana is your father's company; is that correct?

24 A Yes.

25 Q And did you pay rent to Waimana during the time you lived

1 in that house?

2 A No, I did not.

3 Q Now, you were there for four years; correct?

4 A Yes.

5 Q And you mentioned your sister Breanne, also known as Liko,  
6 was a couple years older than you; is that correct?

7 A Yes.

8 Q Do you know where she went to college?

9 A She also went to Santa Clara.

10 Q And how many years ahead of you was she in school?

11 A She was three years ahead of me in school.

12 Q So was there a time when the two of you lived together at  
13 that house?

14 A Yes.

15 Q And can you tell us, were there many people that lived in  
16 the house during the four years you were there?

17 A Yes, there were.

18 Q Okay. Can we go maybe year by year and you can describe  
19 who lived at the house with you?

20 A Okay.

21 Q Let's start with your freshman year, which I think you  
22 said started in 2008.

23 A Yes.

24 Q Okay.

25 A So freshman year it was my sister Liko, her classmate Noe,

1 Noe's softball teammate Emily, and myself.

2 Q Okay. And do you recall Liko, your sister, living with  
3 anyone else at the time?

4 A So Mika, her now husband, would come by from time to time  
5 from Berkeley.

6 Q Okay. And Mika is also known as Jonathan; correct?

7 A Yes.

8 Q Last name Kane?

9 A Yes.

10 Q And at the time in 2008 through 2009, were they married?

11 A No.

12 Q He was at Berkeley you said?

13 A Yes.

14 Q And did anyone else live in the house your freshman year?

15 A No.

16 Q Let's turn to your sophomore year. That would be 2009 to  
17 2010; right?

18 A Yes.

19 Q Could you tell us who lived in the house during that year?

20 A My sophomore year: so it was Liko and I again.

21 Q Okay.

22 A Mika was still coming around. I think Noe had stayed for  
23 about half the year. And then she had moved out, and two of my  
24 classmates had moved in. That would be Josh and Murphy.

25 Q And I assume each of these individuals had a separate

1 room; is that how it worked?

2 A Yes.

3 Q And what about your junior year? Who lived at the house?

4 A So my junior year Josh and Murphy stayed. Four more of my  
5 classmates moved in; so that would be Elizabeth, Ashley, Kira,  
6 and Brennan. And I believe Liko and Mika were still in the  
7 house.

8 Q And they were actually in the back house, weren't they?

9 A So my junior year Mika and Liko were in the master bedroom  
10 together.

11 Q Okay.

12 A Yes.

13 Q And were they married at that time?

14 A No, I don't believe so.

15 Q Okay. And where were you living? Which room were you  
16 living in at that time?

17 A I -- so the first half of the year I was in the computer  
18 room. That's downstairs. And then when Noe had moved out from  
19 the upstairs, I had moved upstairs.

20 Q Now, you mention a lot of names. I just want to see if I  
21 have an accurate head count.

22 A Yeah.

23 Q There's Josh. There's Murphy. There's Elizabeth.  
24 There's Ashley. There's Kira. There's Brennan. There's Liko.  
25 There's her then boyfriend, Jonathan. And then there's you.



1 Correct?

2 A Yes.

3 Q So nine people?

4 A Yes.

5 Q And how about your senior year?

6 A My senior year Liko and Mika had moved into the back  
7 house, and two others had moved in aside from the, I guess,  
8 what was that? Seven from my junior year. Would be Agi  
9 (phonetic) and Aaron had moved in. So there's still nine in  
10 the front.

11 Q Okay. So nine people in the front house and two in the  
12 back?

13 A Yes.

14 Q So eleven people.

15 A Yes.

16 Q Now, I think you mentioned earlier that -- maybe I didn't  
17 ask you. Did you pay rent to your father for living in the  
18 house?

19 A You had asked earlier, and I said no.

20 Q Thank you. Did you charge rent to any of the people who  
21 lived at the house with you?

22 A Yes.

23 Q And what was the amount of rent that was charged?

24 A So I believe my sister was charging them 650.

25 Q Okay. And by "sister" you mean Liko; is that correct?

1 A Yes.

2 Q And when you say "650," are you referring to that amount  
3 per occupant?

4 A Yes.

5 Q Okay. Now, I'm going to change subjects. I'll stay with  
6 the four years at Santa Clara but a different topic.

7 Were there times when your father would visit you  
8 when you were a student at Santa Clara?

9 A Yes.

10 Q And can you tell us about how many times each year he  
11 visited you.

12 A It was at least twice a year.

13 Q And what were the circumstances under which he would  
14 visit?

15 A A lot of the times it was either a trip to or from the  
16 East Coast, and he'd stop over for three days, maybe a little  
17 more.

18 Q And would he stay in the house when he visited?

19 A Yes.

20 Q And tell us where he generally would stay.

21 A So my freshman and sophomore year I believe he stayed in  
22 the back house. And my junior and senior year he would stay in  
23 the master bedroom where I was staying.

24 Q And when he would stay in the master bedroom, where would  
25 you stay?

1 A On the couch.

2 Q And I think you gave us a pretty good picture of the  
3 layout of the house, but I don't think I asked you. Was there  
4 any separate room reserved for his exclusive use?

5 A Aside from the bedroom, no.

6 Q And the bedroom would be where you were sleeping normally;  
7 correct?

8 A Yes.

9 Q Now, did you have access to a car while you were in  
10 college?

11 A Yes.

12 Q What kind of a car was it?

13 A It was a Buick Enclave.

14 Q And I'm not familiar with the type of car that is.

15 A It's an SUV.

16 Q And did you buy the Buick Enclave?

17 A No, I did not.

18 Q Do you know who did?

19 A So the summer before I moved up, my sister Liko and my  
20 father had bought the car.

21 Q And do you have knowledge of who paid for the car?

22 A I have knowledge of the ownership, and that would be  
23 Waimana.

24 Q And was the Buick Enclave available to you and your sister  
25 during the time you lived at the Monroe Street place?

1 A Yes.

2 Q So you had the keys, and you could use it for whatever  
3 purpose you wanted.

4 A Yes.

5 Q Now, during the time you were living in Santa Clara, were  
6 you receiving money from Waimana?

7 A Yes, I was.

8 Q Do you recall the amount that you were receiving?

9 A I believe it was somewhere from 45 to 50,000.

10 Q And how would that money be given to you?

11 A It was a direct deposit.

12 Q So it would just show up in your account.

13 A Yes.

14 Q Do you recall getting a raise when you graduated?

15 A Yes.

16 Q And what did your pay go up to, if you recall?

17 A I believe that's when it went up to 50,000.

18 Q Now, you say you graduated in 2012; correct?

19 A Yes.

20 Q And what did you do immediately after graduating?

21 A I had a job at the Art Department, and I continued on  
22 until the end of the summer. And in -- so that ended in  
23 August, and I had traveled back home in September.

24 Q When you say "Art Department," are you referring to Santa  
25 Clara University?

1 A Yes.

2 Q So you just worked there in the area where you had been  
3 studying; correct?

4 A Yes.

5 Q And you returned in September of 2012 you said.

6 A Yes.

7 Q By the way, do you know who is living in the Santa Clara  
8 house now?

9 A I believe it's Santa Clara graduates and a few of  
10 Mika's -- Jonathan's, what would you say, students or I guess  
11 people that he had coached.

12 Q Okay. And was there a time when Jonathan's parents  
13 actually lived in the Santa Clara house?

14 A Yes.

15 Q Where did they live?

16 A So they were living in the back house. I believe they  
17 moved in the summer after I graduated.

18 Q Okay. Now, you say that you returned in the late summer,  
19 early fall of 2012; is that correct?

20 A Yes.

21 Q And have you continued your interest in art and sculpture?

22 A Yes.

23 Q In fact, that's a passion for you, is it not?

24 A Occupation.

25 Q You're not passionate about it?

1 A I'm passionate, but I made it an occupation as well.

2 Q All right. And describe how you have pursued that  
3 occupation.

4 A So coming home in September I had connected with an art  
5 teacher from my high school at Kamehameha. I asked if I could  
6 bolster my resume, get teaching experience so that I could  
7 apply for a master's in fine arts. I also participated in  
8 group shows. I've had two solo shows since I've been home.  
9 I've participated in three murals, community murals. I've  
10 started my own art studio company. And I'm also freelancing as  
11 an artist.

12 Q And you've done all these activities since you returned in  
13 2012.

14 A Yes.

15 Q And did there come a time when you worked for a company  
16 called 808 Urban?

17 A Yes.

18 Q That's one of the companies you just referenced; correct?

19 A Yes.

20 Q And tell us what you did for 808 Urban.

21 A So 808 Urban, we, as artists, were asked to design and  
22 produce a mural for Kamehameha Schools, and 808 Urban was the  
23 company that took care of the liability insurance and the  
24 paperwork so that we could do what we like to do.

25 Q And did you actually at some point do a mural at Matsumoto

1 Shave Ice?

2 A Yes.

3 Q Now, you say that you hope to get a master's degree; is  
4 that correct?

5 A That was correct.

6 Q It no longer is.

7 A It's on the back burner.

8 Q Now, the various positions or things you've done in art  
9 and sculpture in the last three years, were they paid  
10 positions?

11 A Some were paid. Some were volunteer.

12 Q During that same period of time were you also being paid  
13 by Waimana Enterprises?

14 A Yes.

15 Q And what duties have you been performing for Waimana  
16 Enterprises between 2012 and the present?

17 A I'd say similar duties to what I've been doing since 2004.  
18 It's working on the weekends out at the Mililani property. I  
19 was asked to work full time for a while in December of 2012 as  
20 a field technician in which I had to stop what I was doing,  
21 install telephone cables, emergency phone lines, things like  
22 that.

23 Q Let me see if I can break that down. You started by  
24 saying the duties that you have now are similar to those that  
25 you've had since 2004. Right?

1 A Yes.

2 Q So 2004 would be about ninth grade?

3 A Yes.

4 Q And what would you do when you were a ninth grade student  
5 for Waimana?

6 A On weekends my father would take us out -- well, at that  
7 time I believe the Mililani property was starting to roll and  
8 get more activities happening there. So he'd take us out on  
9 the weekends, and we'd work, drive tractors to cut the grass.  
10 If there was buildings that needed to go up, we'd help in that  
11 manner. So --

12 Q And would you do that generally in the summers during your  
13 high school?

14 A So two summers during my high school -- during the time I  
15 was in high school, I actually worked full-time out there. And  
16 a couple of summers I volunteered or interned at a fish pond in  
17 Kane'ohe. And another summer I went to summer school.

18 Q So two of your four summers you actually worked at the  
19 Waimana property.

20 A Yes.

21 Q And you say that your present duties are similar to the  
22 ones you had back in high school.

23 A Yes.

24 Q And are you receiving pay from Waimana at the present  
25 time?



1 A Yes.

2 Q What is your rate of pay?

3 A I believe it's 50,000.

4 Q Okay. Per year?

5 A Yes.

6 Q So you're on salary.

7 A Yes.

8 Q Now, I want to turn your attention a little bit to the  
9 family again. I don't think I asked you. What does your  
10 mother -- let me back up.

11 Tell us about your mother's education.

12 A So she graduated from -- well, she went to school -- I  
13 guess it's St. Marks or something in Waialua. She went to  
14 Maryknoll for a little while. Then she went to Kamehameha  
15 Schools, graduated class of '73.

16 After Kamehameha Schools she went to Wesleyan on the  
17 East Coast. She got a bachelor's. I don't know in what. And  
18 then she -- shortly after she went to Harvard and got a  
19 master's in -- I believe it's planning.

20 Q Okay. And are you familiar with her work history?

21 A Somewhat.

22 Q Okay. Do you know where she has worked?

23 A Yes.

24 Q Where has she worked?

25 A I believe after graduating from Harvard she was hired by

1 the state. She worked at OHA. She worked at U.H. She worked  
2 at Academy of the Pacific, a small school up in Kalihi.

3 Q Okay. And was there ever a time when she, basically,  
4 stayed at home, took care of the family and the house?

5 A Yes.

6 Q And when did that occur?

7 A So that was after she had worked at AOP. I believe that's  
8 sometime when I started high school.

9 Q Okay. Actually, were you in seventh grade when that  
10 occurred?

11 A That might be true.

12 Q Okay. And how long did it last? From when you were  
13 seventh grade until when?

14 A Sorry. Seventh grade until, I guess, recently, 2013.

15 Q Okay. And just so we're clear because I'm not a math  
16 major, seventh grade would have been what year for you? You  
17 grad in 2008; right?

18 A 2001 or 2000. 2001.

19 Q And during that period of time she was, basically, taking  
20 care the family at home; correct?

21 A To my knowledge, yes.

22 MR. TONG: May I have one moment, Your Honor?

23 THE COURT: Yes.

24 MR. TONG: Thank you, Mr. Hee. I have no further  
25 questions.

1                   MR. TOSCHER: May it please the Court. Ladies and  
2 gentlemen.

3   CROSS-EXAMINATION

4 BY MR. TOSCHER:

5 Q       Good morning, Mr. Hee.

6 A       Good morning.

7 Q       Now, you testified on direct you've been employed and  
8 received a salary from Waimana since -- is it middle school or  
9 junior high?

10 A       I received salary since 2008, but I have received payments  
11 on hourly wages prior to that.

12 Q       Thank you for clarifying that. Before you -- you went on  
13 salary in 2008. Before that you received an hourly wage?

14 A       Yes.

15 Q       And that was for work during high school out at the  
16 Mililani property?

17 A       Yes.

18 Q       Okay. So could you describe the Mililani property and how  
19 it fits into the business of Sandwich Isles and Waimana,  
20 please.

21 A       So when -- at the time that the Mililani property was  
22 purchased, which, I believe, was the early 2000s, SIC, Sandwich  
23 Isles, was completing the fiber optic networks on the different  
24 islands with servicing Hawaiian Homelands. And my father was  
25 looking for a place to centralize that network and run all the

1 cables into one location, and that would be Mililani.

2 Q Thank you. Then when you graduated high school in 2008,  
3 that's when you were put on salary; is that correct?

4 A I believe it was a little bit earlier.

5 Q Now, was it always -- was it your understanding that you  
6 were going to be involved and with your siblings take over the  
7 company?

8 A Yes. I mean, we were raised around the company. My  
9 father would always talk to us. I mean, even at a young age we  
10 were always listening to my parents talk about the company.  
11 Especially when we were in elementary, the company was going  
12 through some hard times, and my father was trying to describe  
13 what he was building for us, for our family, for my kids, for  
14 their kids, and what it meant to just the Hawaiian community.

15 Q Was he trying to instill an obligation in you, do you  
16 think?

17 A I don't know if he was trying, but he did. So --

18 Q All right. Let's try -- I know we're going back a long  
19 time. Do you remember -- I'm trying to isolate an incident  
20 when you were in middle school and you were being tested for  
21 college suitability.

22 A Yes.

23 Q Tell us what was -- how you were being tested and then the  
24 ensuing discussion with your father.

25 MR. TONG: Well, I object to the latter part. It's

1 hearsay.

2 THE COURT: Sustained.

3 MR. TOSCHER: Let me rephrase.

4 Q Tell us about the testing, what was done, and then I'll  
5 follow up with a question on that.

6 A Okay. So in, I believe, eighth grade, it was part of a, I  
7 guess, career assignment. We had to take tests to kind of see  
8 where our logic was leading us. Mines led to math and science.  
9 And that was kind of worrisome for me being that my father had  
10 a business, we were raised to eventually run that business, and  
11 I didn't see what math and science would do for me in college  
12 in terms of running a business.

13 So I approached my father, and we talked about this.  
14 We talked about how this would fit into the company.

15 Q Okay. You wanted to know from him how your focus on math  
16 and science would fit in with your involvement with the  
17 company.

18 A Yes. Specifically, oceanography and marine biology.

19 Q Now, let me -- you testified on direct before regarding  
20 your salary and the present salary. And I think there may be a  
21 little confusion as to the number. That's when you graduate.

22 Were you receiving a -- do you recall what your  
23 salary was when you first started going on salary?

24 A I believe it was around 25,000, maybe \$30,000.

25 Q Okay. And it was raised over this period of time until

1 graduation when you graduated from college.

2 A Yes. Yes.

3 Q You talked a bit about on direct testimony the Santa Clara  
4 house. Did you -- what were your -- did you view yourself as  
5 having responsibilities for taking care of the Santa Clara  
6 house?

7 A Yes. There was a lot to be done at the house.

8 Q Okay. What were those responsibilities?

9 A So in those exhibits we previously saw, it was upkeep of  
10 the structure itself, upkeep of the lawns, upkeep of the  
11 landscape. There's problems with plumbing. The sinks were  
12 leaking. The actual plumbing under the house involving the  
13 sewage, there were missing pipes. And the dryer vent wasn't  
14 there so the lint would pile up in the laundry room. Changing  
15 light bulbs, the more simpler things.

16 Q So this was a relatively new house when it was purchased,  
17 was it not?

18 A I believe it was brand new.

19 Q Brand new. But it seems like there was a lot of work to  
20 be done?

21 A Yeah.

22 Q And why was that?

23 A It was just poorly made.

24 Q Other than your maintaining the property, who had  
25 responsibility for the renters in the house?

1 A So Liko, my sister, took care of the bills -- paying the  
2 bills, calling in professionals if I couldn't do the job, or if  
3 I screwed up. She took care of collecting the rent. She took  
4 care of purchasing items for the house, things of that nature.

5 Q Okay. Mr. Tong took you through the names of the various  
6 students that lived in the house before. It seemed like there  
7 were quite a few. Were they sharing rooms when there was 11 or  
8 12 people there?

9 A Yes. So Ashmo and -- I'm sorry, Ashley. Ashley and  
10 Brennan were a couple; so they were sharing a room. Aaron and  
11 Agi my senior year were sharing a room. Everyone else, it kind  
12 of worked out that they had their own rooms.

13 Q Now, I know it changed over the period of time you were  
14 there. The first couple of years you were there, your freshman  
15 and sophomore year, was the back house or the guest house, was  
16 that empty for your father's use when he would come up to Santa  
17 Clara?

18 A Yes.

19 Q And later on after, I guess, the junior year, that's when  
20 Liko and Mika moved in?

21 A Yes.

22 Q And when your father came up for visits, then his room --  
23 your room became his room.

24 A Yes.

25 MR. TOSCHER: Now, can we publish 16B, please.

1 Q Now, this was not a picture of when you lived there, was  
2 it, Mr. Hee?

3 A Probably not.

4 Q Let me just ask you this question. When you were living  
5 there, were you also the gardener?

6 A Yeah.

7 Q Okay. You notice the fence on the left-hand side?

8 A Yes.

9 Q Do you know who built that fence?

10 A I did.

11 Q That was one of the projects you did.

12 A Yes.

13 Q Okay. You can take it down.

14 Now, focusing when your father did visit you, did you  
15 both work on projects around the house together?

16 A Yes. So if there were projects that were a little out of  
17 my comfort zone or my knowledge base, I would kind of save them  
18 for when he would visit. One of them was the roof. We put a  
19 roof over a pavilion in the backyard between the garage and the  
20 front house. Another was the actual plumbing when we found  
21 out -- when we found out that the clean-out -- clean-out pipes,  
22 I guess, were missing. Another was the sinks, actually pulling  
23 out a lot of the plumbing in the sinks to find out what was  
24 wrong with it.

25 Q Okay. Now, you testified -- I'm not sure I heard the --



1 how many times do you estimate your father visited a year?

2 A It was at least twice during the school year.

3 Q Were there more visits than twice? You said at least  
4 twice.

5 A Yeah, at least twice. Some years it was maybe more,  
6 depending on what he was involved with and what needed to be  
7 done in Washington.

8 Q All right. He would be stopping on his way back to the  
9 East Coast.

10 A Yes.

11 Q And that was -- he was going to Washington for what type  
12 of business?

13 A So it was either my junior or senior year he had to  
14 testify in front of a committee -- I think Senator Akaka was  
15 the head of the committee -- on -- I think all the companies  
16 similar to Sandwich Isles across the nation were receiving  
17 budget cuts, and they all service rural areas that serve  
18 indigenous peoples. So he had to testify on why projects and  
19 companies, such as Sandwich Isles, were so important to the  
20 people that they serve.

21 Q Let me -- focusing on your time at college, you said you  
22 started out and you described in the environmental science  
23 program, and that's what you got your basic degree in.

24 Correct?

25 A Yes.

1 Q And but then you took on a second major in arts.

2 A Yes.

3 Q Do you still have -- are you interested in both areas  
4 still?

5 A Yes.

6 Q The -- now, I'm not sure it was clear. Did you ever apply  
7 for the master's program?

8 A Yes, I did. And I got denied.

9 Q The -- you graduated Santa Clara in 2012, you worked in  
10 the Art Department there till about August, and then you  
11 returned to Honolulu.

12 A Yes, that's correct.

13 Q Now, you described that you were working -- you were doing  
14 some volunteer work and doing some working -- I'm sorry,  
15 volunteer work and then later working at the school in the Art  
16 Department. Did there come a time that either your father or  
17 sister contacted you regarding doing some work for the company?  
18 Coming back on a certain project?

19 A Yes.

20 Q And I think you testified on direct that you were called  
21 upon to help install some telephone lines?

22 A Yes, that's correct.

23 Q Tell us what that entailed, what you did, how long it was.

24 A So it was a full-time -- it was a full day. You start at,  
25 like, 7:30. And because it was a project that needed to be

1 done quickly, we'd stay out till maybe 5:00, five o'clock. It  
2 was out at Nanakuli at the charter school right to the left of  
3 the highway. I forget the name of it. But that was one  
4 location.

5           This was -- this involved like pulling lines,  
6 telephone lines, through attics, through conduits --  
7 underground conduits, connecting them to switches, installing  
8 the actual hardware, the phone lines, the phone themselves,  
9 trouble shooting. If we screwed up on a connection, then we  
10 got to figure out which wire was which, things of that  
11 nature.

12 Q     Okay. When you were called to take on that project, how  
13 long did the project last?

14 A     One to two months.

15 Q     Okay. At the time you were called -- do you recall who  
16 called you? Was it your dad or your sister?

17 A     I believe it was my sister acting on the orders of my  
18 father. That's usually how it happens. My father tells my  
19 sister to tell me something, or my father tells me. I can't  
20 distinguish in that instance who it was.

21 Q     And when you say your sister, which sister are you  
22 talking?

23 A     That's Liko.

24 Q     Liko. Now, at the time you received the call, where were  
25 you working or what were you doing?

1 A So I was -- at that time I was a guest artist at  
2 Kamehameha Schools. I wasn't officially a teaching assistant.  
3 So I was going up during class time, working on personal  
4 projects and also helping students in their wheel-throwing  
5 classes.

6 Q Okay. And were you being paid, or were you volunteering?

7 A I was a volunteer.

8 Q And did you have to leave that position when you got the  
9 call?

10 A Yes.

11 Q And how did you feel about that?

12 A I mean, I was kind of bummed, but it's expected. I knew I  
13 was on call. I know that, if the company needs me to work,  
14 I'll work. So --

15 Q Now, describe a little bit about your experience in  
16 working and dealing with the other employees you were working  
17 with when you were doing the project as a field tech?

18 MR. TONG: I object to the relevance, Your Honor, and  
19 also beyond the scope.

20 MR. TOSCHER: Your Honor, I think --

21 THE COURT: I'll allow it. Overruled.

22 THE WITNESS: So a lot of these field techs, or at  
23 least the ones I was working directly under, they're retirees  
24 from Hawaiian Tel. There's one in particular that doesn't  
25 really give a lot -- give a crap who I am or who I'm related

1 to. So he was genuine towards me in the fact that I didn't  
2 know anything about pulling lines and connecting phones.

3 But there are others that, I mean, I'm the boss's  
4 son; so they're going to be nervous. It didn't feel genuine.  
5 It didn't feel like a genuine work environment, which is to be  
6 expected.

7 BY MR. TOSCHER:

8 Q And is that one of the reasons that you didn't want to  
9 work at the company after that for the present time?

10 A Yeah. So, currently, I have a full-time position that's  
11 not with the company. It's with DLNR. And I sought out this  
12 position because I wanted -- I wanted experience working in an  
13 office or anywhere, just working, without having to worry about  
14 them knowing who I am, without having to worry about special  
15 treatment or bias.

16 Q So if the company called you today, would you leave your  
17 present job and go back to the company?

18 A Yeah, I would have to.

19 Q And why do you say you would have to?

20 A I mean, that's how I was raised. The company is part of  
21 my duty as part of my life; so, if it needed me, it needed me.

22 MR. TOSCHER: I have no further questions, Your  
23 Honor.

24 THE COURT: Okay. Mr. Tong.

25 RE-DIRECT EXAMINATION

1 BY MR. TONG:

2 Q Mr. Hee, I think you testified that your father instilled  
3 an obligation in you to work for the company; is that correct?

4 A Yes, that's correct.

5 Q And you never considered yourself a management trainee,  
6 though, did you.

7 A No.

8 Q And you were asked that in the grand jury, and you said  
9 even as of a year ago you never considered yourself a  
10 management trainee; right?

11 A I believe they asked if I had heard of a management  
12 trainee program, and I said, No, I did not hear of a management  
13 trainee program.

14 Q So to clarify, you had never heard of a program for  
15 management trainee that included you; is that correct?

16 A Yes.

17 Q Now, I believe you testified that you, essentially, did  
18 upkeep of the Santa Clara property during the four years you  
19 were there; correct?

20 A Yes.

21 Q And you described the upkeep that you did; right?

22 A Yes.

23 Q And also the work that your sister Breanne did in  
24 collecting rent and paying the bills; correct?

25 A Yes.

1 Q And during that time each of you was being paid at least  
2 \$20,000 a year; is that correct?

3 A Yes.

4 Q I think you talked a little bit about your dad's visits.  
5 And if I understood you, normally he would stop at Santa Clara  
6 after he had business in Washington, D.C.; is that correct?

7 A Yes.

8 Q Or before he went to D.C. for business.

9 A Yes.

10 Q And you said that you're presently working for the DLNR  
11 full time?

12 A Yes.

13 Q So we're clear, that would be the State of Hawai'i  
14 Department of Land and Natural Resources?

15 A Yes, that's correct.

16 Q What are you doing for them?

17 A I am in the Division of Forestry and Wildlife. I work in  
18 a small program, the snail extinction prevention program. I'm  
19 a field technician. We manage and are trying to stabilize the  
20 native tree snail populations that exist on the Wai'anaes and  
21 the Ko'olaus up in the summits.

22 Q Is that a full-time position?

23 A Yes.

24 Q How long have you had that job?

25 A I began there mid-February of this year.

1 Q So about four months.

2 A Yes.

3 Q And without telling us how much, are you being paid a  
4 salary?

5 A Yes.

6 Q And are you still receiving a salary from Waimana?

7 A Yes.

8 Q And that is to be on call as needed; is that correct?

9 A Yes.

10 Q This may sound random, but you mentioned that you applied  
11 for a master's degree.

12 A Yes.

13 Q And it didn't quite work out.

14 A No.

15 Q When did you apply to gain admission to a program?

16 A I believe it was 2013 February.

17 Q So about two years ago.

18 A Yes.

19 MR. TONG: Thank you. I have nothing further.

20 MR. TOSCHER: Thank you, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. TOSCHER:

23 Q Mr. Tong asked you on redirect your knowledge of a  
24 management training or management trainee program. During this  
25 period of time in high school and in college, were you being



1 trained by your father to take over the company?

2 MR. TONG: Objection, Your Honor. He's not aware of  
3 a program. No foundation. Otherwise, it's a hearsay  
4 statement.

5 MR. TOSCHER: No. Different --

6 THE COURT: I'm going to sustain that particular  
7 objection. You may be able to get what you want with  
8 rephrasing.

9 BY MR. TOSCHER:

10 Q During this period -- I'm going to try to rephrase, Your  
11 Honor, because I don't -- were you being trained by your  
12 father?

13 A Yes.

14 Q Okay. Now, Mr. Tong just asked you about your current  
15 job. Have there been instances since you've been working at  
16 that job that you've been called back to do projects at the  
17 company?

18 A I've worked on a few projects. They're usually on the  
19 weekends. But I was helping to roof the pump house, which is  
20 going to be the offices for the administration of the Waimana  
21 and SIC out in Mililani.

22 MR. TOSCHER: No further questions, Your Honor.

23 THE COURT: Mr. Tong.

24 MR. TONG: No, Your Honor. Thank you.

25 THE COURT: Okay. Then the witness is excused. You

1 may step down and leave the courtroom.

2 (Witness excused.)

3 THE COURT: And, Mr. Tong, you can call your next  
4 witness. Who will it be?

5 MR. TONG: Frank Molinari, Your Honor.

6 THE COURT: All right.

7 (Witness photographed.)

8 THE CLERK: Please raise your right hand.

9 (Witness sworn.)

10 THE CLERK: Thank you. Please be seated.

11 Please state your name and spell your last name.

12 THE WITNESS: My name is Frank Richard Molinari,  
13 M-o-l-i-n-a-r-i.

14 MR. TONG: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. TONG:

17 Q Good morning, sir.

18 A Good morning.

19 Q How are you employed?

20 A I work for the Internal Revenue Service out of San  
21 Francisco, California.

22 Q And what is your position with the IRS?

23 A Yes. I'm a lead appraiser with the engineer group of San  
24 Francisco.

25 Q How long have you been with the IRS?

1 A I've been with the IRS for seven years, since 2008.

2 Q How long have you been in your present position?

3 A Since January of 2015.

4 Q And what did you do during the balance of your seven years  
5 with the IRS?

6 A Yes. I was a senior real estate appraiser, same position,  
7 in San Francisco.

8 Q And in your capacity as a lead appraiser, what do you do?

9 A I review real estate appraisals for the Internal Revenue  
10 Service. I also prepare real estate appraisals for the  
11 Internal Revenue Service for estate and gift purposes, for  
12 income tax purposes, noncash charitable contributions.

13 Q All right. And can you tell us a little bit about what  
14 your formal education consists of?

15 A Yes. I have three years of college, and I have a  
16 professional designation in the real estate.

17 Q Okay. And did you get a degree from your three years of  
18 college?

19 A No, I didn't.

20 Q You say you have experience in the appraisal business; is  
21 that correct?

22 A That's correct.

23 Q And how long have you been engaged in the real estate  
24 appraisal business?

25 A 30 years.

1 Q And can you tell us, generally speaking, maybe by  
2 category, the type of work that you've done over the last 30  
3 years.

4 A Yes. I've prepared appraisals and reviewed appraisals for  
5 residential properties, commercial properties, vacate land, and  
6 special-purpose properties.

7 THE COURT: Mr. Tong, can you shift the mike a little  
8 because you're not talking directly into it.

9 MR. TONG: I'm always doing that, Your Honor. I  
10 apologize.

11 Every time you say that I look up, and I get those  
12 dagger eyes.

13 Q Sorry, Mr. Molinari. I lost my concentration.

14 A That's okay.

15 Q So 30 years in the business; correct?

16 A Yes.

17 Q And tell us the types of organizations for which you have  
18 worked.

19 A Yes. I started out in the real estate appraisal business  
20 working for major banks, Great Western Bank out of California,  
21 Savings of America out of California. And then in 1990 I went  
22 out on my own and started my own company: Prestige Appraisal  
23 Service.

24 Q How long were you with Prestige Appraisal Services?

25 A I was with Prestige until 2003 when I moved to California

1 and went to work with Ameriquest Mortgage Corporation out of  
2 Orange County, California. And then I went back to work with  
3 Prestige when Ameriquest laid me off in 2006.

4 Q Okay. And starting with when you began in appraising work  
5 to the present, how long have you continuously been in that  
6 field?

7 A 30 years.

8 Q Do you hold any professional licenses?

9 A Yes. I hold the state certified general license for the  
10 state of California, the state certified general license for  
11 real estate appraising for the state of Florida.

12 Q When did you obtain those licenses?

13 A So the Florida license was obtained in 1990, and the  
14 California license was obtained in 2003.

15 Q What do you have to do in order to obtain licenses of that  
16 sort?

17 A Yes. You have to take numerous classes, real estate  
18 appraisal classes, you have to show experience work to a review  
19 panel that goes over your work, and then you have to pass a  
20 test and then you're awarded the designation.

21 Q What does the designation authorize you to do?

22 A The designation authorizes me to appraise -- I'm sorry.

23 VOICE IN AUDIENCE: Sorry, Your Honor. I didn't know  
24 it was on.

25 THE COURT: Okay. Go ahead.

1 THE WITNESS: Yes.

2 BY MR. TONG:

3 Q Tell us again what the designation --

4 A I have two designations. One is the SRA that was awarded  
5 with the Appraisal Institute, which is a professional society  
6 of appraisers located in Chicago. That designation allows me  
7 to appraise residential properties. And then I have a CVA  
8 designation. That's a business valuation designation that  
9 allows me to appraise businesses.

10 Q And about how many appraisals have you done over the last  
11 30 years?

12 A Well over a thousand.

13 Q And what types of appraisals have you done?

14 A I've prepared reports for, obviously, single-family  
15 residences, commercial properties, income properties, apartment  
16 buildings, vacant land, agricultural land, fair market rent  
17 studies, and special-purpose properties like a church or a  
18 sailing club.

19 Q Over your career have you sometimes taught others about  
20 the appraisal business?

21 A Yes. I've been an instructor for probably 25 of those 30  
22 years, I've taught classes for the Appraisal Institute, and I  
23 also had my own real estate appraisal school in south Florida  
24 that I had that I taught classes. And now I teach classes for  
25 the IRS around the country, seminars.

1 Q Have you testified in court before?

2 A Yes, I have.

3 Q And have you ever been qualified as an expert witness?

4 A Yes, I have.

5 Q On how many occasions?

6 A Four.

7 Q And would that be in the field of real estate valuation?

8 A Yes, that's correct.

9 Q What courts have qualified you in that field?

10 A So Tax Court in San Francisco; District Court in Miami;  
11 Circuit Court in Miami Dade; and Circuit Court in Amador  
12 County, California.

13 MR. TONG: Your Honor, we would offer Mr. Molinari as  
14 an expert in the field of real estate appraisal.

15 MR. TOSCHER: No objection, Your Honor.

16 THE COURT: All right. Then he is allowed to give  
17 his opinions in the area of real estate appraisal.

18 BY MR. TONG:

19 Q Okay. Mr. Molinari, were you asked to appraise the fair  
20 market rent value of a property located at 386 Monroe Street,  
21 Santa Clara, California?

22 A Yes.

23 Q And what period of time were you asked to give that  
24 appraisal for?

25 A Yes. I was asked to give the fair market rent value

1 starting in June of 2008 and ending in March of 2015.

2 Q Okay. And do you have a normal procedure of how you go  
3 about performing a fair market rent evaluation?

4 A Yes, I do.

5 Q Did you follow that procedure in this instance?

6 A Yes, I did.

7 Q Could you describe, generally, what you do first.

8 A Yeah, so first we have to identify the problem or the  
9 assignment. In this case it was to establish the fair market  
10 rent for this house in Santa Clara.

11 And so once I establish what the assignment is, then  
12 I move on to the scope of work: What is it going to take to  
13 accomplish that valuation assignment? The scope of work can  
14 include research on the subject property, on the county tax  
15 records to find out how large it is, what kind of physical  
16 characteristics it has, what the zoning is, where it's located.  
17 And then I also do research in that same phase for  
18 comparable -- in this case comparable rental properties, where  
19 I search real estate databases looking for comparable rented  
20 properties.

21 Then there's also -- in that same scope of work, I  
22 have to figure out if I'm going to visually view the  
23 properties. Where is the subject? Where do I have to go to  
24 look at the property? Can I get inside the property, or is it  
25 something I have to do from the outside? And then also I have



1 to do the same for the comparable properties, which in all  
2 cases -- most cases you can only see from the outside.

3 And then the third step of that process is putting  
4 that all together in the final reconciliation and the analysis,  
5 basically looking at the numbers and analyzing the market  
6 trends. And in this case it was the fair market trends: What  
7 were the rental properties going for in those years in that  
8 time period? What was the demand and supply? And then coming  
9 up with a fair market rent for each year.

10 Q And have you conducted an analysis which generally follows  
11 the procedures you've just described?

12 A Yes.

13 Q You've talked about comparable properties. Is that part  
14 of what an appraiser uses?

15 A Yes.

16 Q And can you explain to the jurors how you go about doing  
17 that kind of analysis.

18 A So the comparable properties, I guess, hypothetically,  
19 would be like your house. If you wanted to go buy a house and  
20 you had many houses to choose from, and you finally found one,  
21 but you weren't sure if it was priced right; so you would go  
22 maybe on a Sunday and look at other open houses to see how  
23 those houses compare to the one that you're looking at. So if  
24 you found a house that was larger than yours, then you know  
25 that your house would probably sell for a little bit less. If

1 you found a house that was smaller, then your house would sell  
2 for more.

3 So that's the basic premise is to find -- compare  
4 apples to apples, so to speak. But not every house is the  
5 same; so we try to find the most similar with size, age,  
6 condition, and location, and then we go from there to see,  
7 well, what are the differences, and then we reconcile that into  
8 a value at the end. But the first step is to go and try to  
9 find those properties that are as most similar as we can that  
10 were rented in that time period.

11 Q Okay. And you mentioned earlier that in doing that  
12 analysis you need to find out information about the -- what you  
13 call the subject property.

14 A That's correct.

15 Q And the subject property in this case would be the Monroe  
16 Street property whose address I gave you earlier; correct?

17 A Yes.

18 Q And did you go about and determine the characteristics of  
19 that property?

20 A Yes. So we -- appraisers, we have an online subscription  
21 to a third-party database that collects tax records from the  
22 county courthouses, and so I was able to go online and look up  
23 the subject property and find the property characteristics from  
24 the tax assessor, from the building department. I was also  
25 able to find some permit records that was on the subject

1 property. I looked at some maps that were printed off the  
2 internet of where it was, basically, located and also a tax map  
3 that showed where the exact lot was located and how big the lot  
4 was.

5 And then I also do the same thing for the comparable  
6 properties where we research the comparable properties in those  
7 same databases.

8 Q Okay. Now, without dimming the lights, can you look at  
9 your binder at Exhibit 16A and tell us if that's an aerial map  
10 of where the property is located.

11 A Yes. That's correct.

12 Q That's a map that you prepared as part of your analysis;  
13 is that correct?

14 A Yes.

15 Q What was the point of, essentially, preparing a map of  
16 that sort?

17 A Well, anytime that we're trying to identify a property, we  
18 start at a wide angle; so we start at a larger scope, meaning  
19 where is it located within the city? And this map was chosen  
20 because it really showed the boundaries of the neighborhood  
21 with Camino -- El Camino Real to the north and Stevens Creek to  
22 the south. And then it showed -- there's an arrow that  
23 actually points to where the subject is located, and it shows  
24 you the streets. It shows you other landmarks. There's Santa  
25 Clara University. That's about a mile to the northwest, I

1 think. And then there's a Catholic cemetery, and there's other  
2 landmarks that show exactly where, in relationship to shopping,  
3 schools, and employment centers, what's the location of the  
4 subject property.

5 Q You mention that you then try to find out a little more  
6 detail about what the property is, like its size and so forth;  
7 correct?

8 A Yes, that's correct.

9 Q And did you do that in this case?

10 A Yes, I did. The records that I got from public records  
11 showed that -- gave the size of the house, the year built, the  
12 tax assessment for the house. It also gave the lot size. I  
13 believe it gave the owner's name. It gave the parcel  
14 identification number, the legal description, and the prior  
15 sale -- any prior sales history also.

16 Q And were you able to determine the size of the particular  
17 property?

18 A Yes, I was.

19 Q What was the size?

20 A I think it was 2,854 square feet for the main house, and  
21 then it had an accessory building in the back of about 600  
22 square feet, more or less. And then it also had a -- what  
23 looked like a two-car garage.

24 Q And when you say "accessory building," would that be  
25 something like a guesthouse?

1 A Yes, a guesthouse.

2 Q And were you able to determine when the property -- or  
3 when the house was built?

4 A Well, the permit records showed that it was demolished.  
5 There was a permit pulled in 2007, I believe, that showed that  
6 the house was demolished. It was an older house. And then  
7 this newer improvements were built. And I think they gave it  
8 an effective age of 2008 is when I think it was finalized, the  
9 permits.

10 Q And what did you do next after looking at all this data?

11 A Well, after I looked at the subject data and tried to  
12 figure out what exactly am I working with here, what am I going  
13 to value, what am I going to use to value this subject  
14 property, I started to do my next step, which is to look for  
15 comparable properties in the sales comparison approach, what I  
16 referred to earlier about looking for other similar dwellings.

17 And so we have a system through the Multiple Listing  
18 Service that the realtors use, the local realtors, that I have  
19 access to also that we use for searches to find these  
20 comparable properties. And so I had to go back into the  
21 archive section because I started to go back from I think it  
22 was a little bit before 2008 all the way to 2015 to look for  
23 these properties for those years.

24 Q Okay. And the purpose of that was to find a property that  
25 was similar in size or location or area you said?

1 A Yes. I usually start out with a general search just to  
2 see if I can find any rental listings. Usually, rentals are  
3 harder to find than sales. Regular listings, even going back  
4 to 2008, are easier to find because there's millions of them  
5 that sell every day throughout the country, but listed --  
6 rental listings are very difficult to find because they're not  
7 as made public record. They're harder to find. And the  
8 realtors don't usually put them on MLS because the commission  
9 isn't as big; so they don't have enough money to put it online.

10 But given that, there were some on there that I did  
11 find. I think I found 16 comparables, and I used 14 of the 16,  
12 and the other two were too small. The hardest part was trying  
13 to find something that was as large as the subject property.

14 Q So it sounds like through your analysis you have the  
15 subject property on the one hand and 14 others that you were  
16 going to compare it to; is that correct?

17 A That's correct.

18 Q After identifying that group of residences, what did you  
19 do?

20 A Then I made notes on the physical characteristics from the  
21 MLS sheets that I had. So I looked at each comparable  
22 property, printed out the slides, looked at the data sheets,  
23 and then I -- the next step in my process is to go look at the  
24 properties. I want to go see -- it's one thing to have a piece  
25 of paper in front of me. I want to go verify the information

1 to make sure that it is what they say it is. And so my next  
2 process was to go inspect not only the comparable properties  
3 but the subject property from the street and see where the  
4 locations were.

5 Q So you went out to the property located on Monroe Street;  
6 correct?

7 A That's correct.

8 Q And if you can look in the binder in front of you, please.

9 THE COURT: Why don't we -- since we're going to look  
10 at a new exhibit, why don't we take a break now. Okay? And  
11 then we'll come back in 10 or 15 minutes.

12 (Jury excused.)

13 THE COURT: Mr. Tong, did you have witnesses other  
14 than the present one?

15 MR. TONG: We have a stipulation to some records and  
16 then two more witnesses. I think we'll go at least till noon,  
17 maybe into the afternoon.

18 THE COURT: Okay.

19 MR. TONG: Thank you, Your Honor.

20 (Court recessed at 10:51 A.M., until 10:58 A.M.)

21 THE COURT: Sorry to keep everyone waiting, but it  
22 was kind of related to this case. I was dealing with asking a  
23 colleague to handle a Naturalization Ceremony so that I don't  
24 have to take off from this trial to do that. So thank you for  
25 waiting.

1                   Go ahead.

2                   MR. TONG: Thank you, Your Honor.

3       Q       Mr. Molinari, I think we left off just when you were  
4       describing that you physically viewed the property to be  
5       appraised and the comparables; correct?

6       A       That's correct.

7       Q       And did you go to all of those 15 properties?

8       A       Yes. It was the subject property and 14 comparable  
9       properties.

10      Q       Okay. And so we're clear, the subject property is the  
11      Monroe Street property that we asked you to appraise?

12      A       That's correct.

13      Q       Okay. And if you could look in your binder at Exhibits  
14      16A through D, which are already in evidence. Are those  
15      photographs?

16      A       Yes, they are.

17      Q       And do they show the property that you were asked to  
18      appraise?

19      A       Yes, they do.

20      Q       And you physically went there; correct?

21      A       Yes.

22      Q       So could you look at Exhibits 16E, 16F, and tell us  
23      whether those are also pictures of the property that you  
24      appraised.

25      A       Okay. 16E is a street scene.



1 Q I'm sorry. You're right.

2 A 16F is a rear photograph that was obtained from the MLS  
3 data sheet back -- going back to the 2008 prior sale.

4 Q And 16E you say is a street view of the street where the  
5 property's located.

6 A That's correct.

7 Q And do those two photographs fairly and accurately depict  
8 the appearance of the property?

9 A That's correct.

10 MR. TONG: We would ask that 16E and F be received.

11 MR. TOSCHER: No objection, Your Honor.

12 THE COURT: All right. Received in evidence.

13 BY MR. TONG:

14 Q Turning now to 16I and 16J, do you recognize those two  
15 photographs?

16 A Yes. 16I is the park across the street from the subject  
17 property, and 16J is also the park but a little bit to the  
18 right of the subject, looking out across the way.

19 Q And do those two photographs fairly and accurately depict  
20 the appearance of the location that you've just described?

21 A Yes.

22 MR. TONG: We would ask that Exhibit 16I and J be  
23 received.

24 MR. TOSCHER: No objection, Your Honor.

25 THE COURT: All right. Received.

1 BY MR. TONG:

2 Q All right. Mr. Molinari, you mentioned you also went out  
3 and looked at all of the comparable properties; correct?

4 A That's correct.

5 Q And did you take photographs of the various comparable  
6 properties or otherwise obtain photographs?

7 A Yes.

8 Q And if you could look through the series of photographs  
9 that are marked as Exhibits 17B, as in boy, through 170, as in  
10 Oscar.

11 A Yes. There's 14 photos, yes.

12 Q And do those 14 photographs fairly and accurately depict  
13 the appearance of the comparable properties that you used for  
14 your analysis?

15 A Yes.

16 MR. TONG: We would ask that Exhibit 17B through 170  
17 be received in evidence.

18 MR. TOSCHER: No objection, Your Honor.

19 THE COURT: Those exhibits are received.

20 BY MR. TONG:

21 Q Now, Mr. Molinari, after looking at all the comparables  
22 and the subject property, what did you do?

23 A After I viewed the -- both the subject property and the  
24 comparable properties, I went back to my office -- well, during  
25 the visualization of those properties, I took notes of where

1 they were located and looked at the sheets that I had on each  
2 property from the MLS. And then after I was done with the  
3 inspections, I went back to my office and started to compile  
4 all the information that I had from my scope of work, which  
5 included my research on the subject property, the physical  
6 characteristics of the subject property, the market area of  
7 Santa Clara, the rental market trends for Santa Clara. That  
8 was all in my research. I started to compile all that  
9 information together, along with the comparable property  
10 information that I observed, and started to formulate an  
11 opinion of the fair market rent.

12 Q And have you actually compiled some charts that show the  
13 pictures of the different properties involved?

14 A Yes, I did.

15 MR. TONG: And, Your Honor, may I use the easel?

16 THE COURT: Yes. Okay. But wait. Has this one  
17 been -- which exhibit number is it?

18 MR. TONG: It's actually a blowup of the exhibits  
19 that are already in evidence, Your Honor. And, Mr. Toscher, I  
20 believe, has seen them.

21 MR. TOSCHER: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MR. TONG:

24 Q Mr. Molinari, just so we get oriented, I'm showing a  
25 chart. Can you see that?

1           THE COURT: Can the jurors see it? Do you want the  
2 witness to come down? That might be helpful.

3           MR. TONG: Yes. If you wouldn't mind,  
4 Mr. Molinari.

5           THE COURT: And, Mr. Tong, we're going to hook you up  
6 also. Or we can give you both handheld.

7           MR. TONG: We have to stay away from each other, as I  
8 recall.

9           THE COURT: Yes. Sorry.

10          MR. TONG: This is the mike; right?

11   Q     Mr. Molinari, tell you what, I'll switch with you, if the  
12 Court is okay with that.

13           Tell us what -- I woke everybody up. Tell us what  
14 appears on that chart.

15   A     So on the easel here is the pictures of the subject  
16 property. Some of the pictures were taken by me on the date of  
17 the inspection, and some of the pictures were obtained from the  
18 MLS history sheet from the prior sale in 2008.

19          THE COURT: Okay. Wait, now. I'm a little worried  
20 about whether the jurors on this -- can you see, too?

21           Okay. Thank you.

22   BY MR. TONG:

23   Q     The chart appears to contain nine different photographs of  
24 the property; is that correct?

25   A     Yes. The property and across the street of the property.

1 Q Why does it matter what's across the street from the  
2 property?

3 A Well, I was trying to get -- to show the view from the  
4 subject front yard of what's around the property. It's always  
5 important to know not only where the lot is located but what  
6 else is located around it.

7 Q Did you also create a chart of the comparable properties?

8 A Yes, I did.

9 Q Do you see that chart, Mr. Molinari?

10 A Yes, I can see it. Thank you.

11 THE COURT: You might want to just hook it onto  
12 your -- yeah.

13 MR. TONG: Testing.

14 Q What does that chart consist of?

15 A These are photographs of the comparable properties that I  
16 used in my report to establish the fair market rent.

17 Q And does each photograph represent one of the 14  
18 properties that you used?

19 A Yes.

20 Q Okay. And where are those 14 properties located?

21 A 12 properties are located in Santa Clara, the same city as  
22 the subject property. One property is located in Campbell,  
23 California; and the other property's located in Saratoga,  
24 California.

25 Q And it would appear that some of those properties might be

1 bigger or smaller than the one you were asked to evaluate; is  
2 that correct?

3 A That's correct.

4 Q Some might be newer or older than the one you were asked  
5 to evaluate; is that correct?

6 A Yes, that's correct.

7 Q And do you take that into account in your analysis?

8 A Yes, I do.

9 Q Does the location of the particular properties that you  
10 evaluated matter?

11 A Yes, it does.

12 Q Why does that matter?

13 A Well, specifically, for fair market rent it matters,  
14 especially for Santa Clara because of the college. Most of the  
15 rental market is derived because of the college kids renting  
16 out rooms, and so the proximity to the college matters for that  
17 particular place for Santa Clara.

18 Q And for the college, are you referring to Santa Clara  
19 University?

20 A Yes, I am.

21 Q Now, as part of your analysis, did you create an aerial  
22 view showing the location of the property you were evaluating  
23 as well as the comparable ones?

24 A Yes.

25 Q And is that the chart over in the corner there?

1 A Yes, I believe so.

2 MR. TOSCHER: Your Honor, I wanted to ask counsel a  
3 question. What's the exhibit number of the next chart?

4 MR. TONG: I'm going to show it to him. It's 17A.

5 MR. TOSCHER: Is 17A in?

6 MR. TONG: It is not in yet.

7 MR. TOSCHER: So but --

8 THE COURT: You two want to confer?

9 MR. TOSCHER: Yeah, I'll just go --

10 THE COURT: You're miked up, though, Mr. Tong; so --  
11 Do you need a mike?

12 MR. TONG: Don't talk into the mike.

13 MR. TOSCHER: Your Honor --

14 THE COURT: 17A is not yet in.

15 MR. TOSCHER: Is not in. He can offer it, and it can  
16 be published.

17 THE COURT: So are you agreeing it can be received?

18 MR. TOSCHER: Yes, Your Honor.

19 THE COURT: Then I'll just receive it. That will be  
20 easier. 17A is received in evidence.

21 BY MR. TONG:

22 Q Mr. Molinari, could you please describe what 17A is.

23 A So this is a comparable sales map that pinpoints where the  
24 subject property is, generally speaking. It's a large map  
25 because it had to be zoomed out to reach all the comparable

1 properties in one map. And then it lists each one by the  
2 number, rental comparable 1, all the way through 14, comparable  
3 2, 6. And this shows the market area, basically, of the San  
4 Jose/Santa Clara area.

5 Q And there are different rental numbers that appear on the  
6 chart, which is 17A; is that correct?

7 A Rental --

8 Q Rental number 1.

9 A Yes. They were all labeled 1 to 14.

10 Q And do they correspond to the photographs that are on the  
11 chart that we saw earlier, the Exhibit 17 series?

12 A Yes.

13 Q And one of them is red; do you see that?

14 A Yes.

15 Q Why is one different than the others?

16 A That's to show that this is the subject property, the  
17 property that I'm valuing. And these are the comparable  
18 properties that I'm comparing to the red property, subject  
19 property.

20 Q Now, did you ultimately analyze all of the data concerning  
21 all of those properties?

22 A Yes, I did.

23 Q And did you come to a conclusion as to the fair market  
24 rental value of the property on Monroe Street?

25 A Yes, I did.



1 Q And are you able to state that conclusion from where you  
2 are, or do you need to resume the stand?

3 A I don't have the report in front of me, but, yes, I did  
4 have a conclusion.

5 Q What did you conclude as to the fair market value of the  
6 property on Monroe Street?

7 A So the fair market conclusion for June 16, 2008, was  
8 \$5,000 per month.

9 Q And how about June 2009?

10 THE COURT: You need to go back to --

11 THE WITNESS: Yeah, I would rather look at the  
12 report.

13 THE COURT: Absolutely. So why don't you hand that  
14 handheld mike back to court staff.

15 (Witness resumes the witness stand.)

16 BY MR. TONG:

17 Q Okay. Mr. Molinari, you reached a conclusion for June  
18 2008 the value was \$5,000 a month; correct?

19 A That's right.

20 Q What about for June 2009?

21 A I believe it was 4800 a month.

22 Q How about June 2010?

23 A I think it was 4700 a month.

24 Q How about June 2011?

25 A I can't say for sure because I don't -- there were six

1 years, and I don't have them in front of me.

2 Q Do you have your report in front of you?

3 A No, I don't.

4 MR. TONG: May I approach, Your Honor?

5 THE COURT: Yes. So you're handing the -- you have a  
6 copy of that?

7 MR. TOSCHER: I believe I do, Your Honor. I believe  
8 I do.

9 Can I ask counsel, that's the copy that you provided  
10 me?

11 MR. TONG: Yes.

12 THE WITNESS: Can you start at the beginning again.

13 BY MR. TONG:

14 Q Okay. Why don't you just go ahead and tell us your  
15 opinions as to the fair market rental value of the property for  
16 the years June 20th, 2008 through March 25, 2015.

17 A Okay. So June 16, 2008, the fair market rental was \$5,000  
18 per month. June 16, 2009, the fair market rent was \$4,800 per  
19 month. June 16th, 2010, the fair market rent was \$4,800 per  
20 month. June 16, 2011, the fair market rent was \$4,700 per  
21 month. June 16th, 2012, the fair market rent was \$5,100 per  
22 month. June 16th, 2013, the fair market rent was \$5,300 per  
23 month. June 16, 2014, the fair market rent was \$6,000 per  
24 month. And March 25th the estimated fair market rent was  
25 \$6,150.

1 Q Now, I notice that you were using the date June 16 quite a  
2 bit; is that correct?

3 A Yes.

4 Q And is it true that June 16, 2008, is the date on which  
5 the property was sold to Waimana Enterprises?

6 A Yes.

7 Q And the numbers you gave us fluctuated; is that correct?

8 A That's correct.

9 Q Why would there be fluctuations of that sort?

10 A Well, there was -- the market was going pretty well in  
11 2005, '6, '7, and started to slow down in 2008. And then after  
12 the market turned down in September of 2008 the market started  
13 to change. There was all of a sudden an oversupply of housing.  
14 There was foreclosures. There was Real Estate Owned, REO,  
15 properties for sale, and the rent started to go down also for a  
16 couple years. And then the market started to pick back up, and  
17 then that's when you'll see that the rents started to increase.

18 Q Now, Mr. Molinari, you're from the Bay Area.

19 A Yes. I live in the Sacramento area. My office is in San  
20 Francisco, the Bay Area.

21 Q Are you familiar with the Bay Area, though?

22 A Yes.

23 Q The peninsula?

24 A Oh, absolutely.

25 Q And about how far is Menlo Park, California, from this

1 property on Monroe Street in Santa Clara?

2 A I think Menlo Park is about 17 miles away.

3 MR. TONG: Thank you. I have nothing further.

4 MR. TOSCHER: May it please the Court, ladies and  
5 gentlemen.

6 CROSS-EXAMINATION

7 BY MR. TOSCHER:

8 Q Good morning, Mr. Molinari.

9 A Good morning.

10 Q Now, the opinions you gave before as to the fair rental  
11 value, that was a valuation for renting the entire house, was  
12 it not?

13 A It was a rental for -- yes, it was.

14 Q The entire property.

15 A The entire property. That's correct.

16 Q And it assumed as well that whoever's going to be renting  
17 it had exclusive use. There would be no other person using the  
18 property. Is that correct?

19 A That could be correct, yes.

20 Q And assumed no other restrictions on the property.

21 A That's correct.

22 THE COURT: Okay. Hold on. You're constantly moving  
23 the mike away from you in increments one inch at a time.  
24 You've done it about four times. So, yeah, put it back.

25 MR. TOSCHER: I don't know why I'm doing that, Your

1 Honor. I apologize.

2 Q You did not value, did you, the fair rental value of a  
3 single room, did you.

4 A No, I did not.

5 Q And that would be a much different value, would it not?

6 A There could be, yes.

7 Q Well, not could be. It would be a much different value  
8 for one room in the house, would it not, Mr. Molinari?

9 A For one room versus the whole house?

10 Q Yes, sir.

11 A Yes.

12 Q And it would be a much, much lower number than the rental  
13 for the entire house, wouldn't it.

14 A Yes.

15 Q The -- in the course of your evaluation -- and you  
16 mentioned it before -- you studied the market for the property  
17 surrounding this specific Monroe Street property, is it not?

18 A Yes.

19 Q And you concluded in your report, did you not, that when  
20 it was purchased by Waimana in June 2008, that the purchase  
21 price represented the fair value for that property?

22 A Yes, I did.

23 Q And you also -- your report contains a study of the  
24 property -- of the values of the property over the next seven  
25 years, I believe.

1 A It was the values of the market area, yes.

2 Q The market values of the property.

3 A There were no market values given in the report. It was  
4 the study of the zip code.

5 Q Okay. But there's a study in your report of the market  
6 values. You reviewed that, did you not?

7 A Yes, market values.

8 Q And you're very familiar with the property in the  
9 geographic area based upon your experience and your study for  
10 this report; correct?

11 A Yes.

12 Q And after this property was purchased by Waimana there was  
13 a very, very significant drop in values of property, was it  
14 not -- was there not?

15 A I don't know if it was a significant drop.

16 Q Well, based upon your report, up in the Bay Area, this  
17 area in San Jose, a 30 percent or 40 percent drop in value?

18 A There could be in some places, yes.

19 Q Okay. Well, I -- I'm just referring to your report.  
20 Maybe if you have it up, there you might want to look at it.

21 A Okay.

22 Q And when the house was purchased, you have it about at  
23 \$463 per square foot. And then I'm looking at your chart here.  
24 By 2011 it dropped all the way down to \$347.

25 A Yes, that's correct.

1 Q That's a substantial drop, is it not?

2 A It's a drop, yes.

3 Q Now, that ties in with the foreclosures you talked about.

4 A Yes.

5 Q And that was right around the time of the big stock market  
6 crash, wasn't that right?

7 A The stock market was September of 2008, yes.

8 Q Right. And that really impacted the property values.

9 A Yes, in some cases.

10 Q And if someone purchased the house -- Waimana purchased it  
11 at the peak of the market, did they not?

12 A It was at the higher end, yes.

13 Q Okay. And it makes good business sense, does it not,  
14 for -- if there was a big drop in value, to hold that for a  
15 period of time.

16 A I mean, that all depends. Some people did sell their  
17 property at foreclosure.

18 Q They had to; correct?

19 A In some cases, yes.

20 Q Now, based upon 17A this property has -- would you say  
21 this property has a convenient location to the San Jose  
22 airport?

23 A Yes.

24 Q Okay. So if we're talking -- you didn't -- again let me  
25 just make sure. You didn't do any evaluation whatsoever of

1 what one room in that house would rent for.

2 A That's correct.

3 Q And your evaluation doesn't take into account, for  
4 instance, if someone would have to vacate their room at a  
5 certain time, if somebody else was going to use the property.

6 A Right. That's correct.

7 Q Would it be a fair rule of thumb, Mr. Molinari, if we  
8 wanted to try to value what the value of one room was, based  
9 upon the square footage of that room, compared to the whole  
10 house? Would that be a fair way to do it?

11 A No, I don't think so.

12 Q Would it be less?

13 A No. I think you would use a per-room maybe unit of  
14 measure versus the square foot.

15 Q Mr. Molinari, the prospect for the value of the subject  
16 property, it's been increasing over the last four years, has it  
17 not?

18 A The prospect for the full fair market value?

19 Q Yes.

20 A Fair market value of the property?

21 Q Yes.

22 A I would say so, yes.

23 Q And in your judgment the prospect for it continuing to go  
24 up in value, based upon the patterns over the last couple of  
25 years?



1 A It could continue, yes.

2 Q You think it's a positive outlook.

3 A I don't know if it's a positive outlook. There's a lot of  
4 negatives in the market right now at this point, if you're  
5 talking about today; so I'm not quite sure how far you're  
6 looking ahead.

7 Q But for the last three or four years it's been going back  
8 up in value; correct, sir?

9 A That's correct.

10 MR. TONG: I object, Your Honor.

11 THE COURT: Withdrawn?

12 MR. TOSCHER: No, Your Honor, not withdrawn.

13 THE COURT: No, no. I'm talking to Mr. Tong.

14 MR. TONG: No. I was objecting, but he answered. I  
15 was objecting to the relevance of this sales trend.

16 THE COURT: But you don't need a ruling from me.

17 MR. TONG: No, I do not at this point, Your Honor.

18 THE COURT: Okay.

19 MR. TOSCHER: One moment, Your Honor.

20 THE COURT: All right.

21 MR. TOSCHER: No further questions, Your Honor.

22 THE COURT: Okay.

23 RE-DIRECT EXAMINATION

24 BY MR. TONG:

25 Q Mr. Molinari, you were asked questions about the fair

1 market sales value of the property; correct?

2 A Yes.

3 Q And, actually, you were asked to assess the fair market  
4 rental value of the property; correct?

5 A That's correct.

6 Q Now, there was some talk about the relationship between  
7 rooms and rental; correct?

8 A Yes.

9 Q And, in general, if there were more rooms in a property,  
10 what would that do to the fair rental value of the property?

11 A Well, if they were rentable rooms and somebody could sleep  
12 there, then they probably -- it would be more. The more  
13 sleepable rooms, the more rent.

14 Q So with regard to the property you evaluated, if a  
15 computer room were converted into a bedroom, how would that  
16 affect the fair rental value of the property?

17 A Yeah, it would go up.

18 Q Because there's one more room to rent.

19 A Yes.

20 Q And if a game room were converted to a bedroom, how would  
21 it affect the fair rental value of the property?

22 A It would add another room that you could rent out, and it  
23 would increase in the market rents.

24 Q And does the fair rental value change over a summer if the  
25 house were not being rented to people?

1 A It could, yes.

2 Q Okay. And why is that?

3 A I mean, if it laid vacant and there was nobody in it?

4 Q Yeah, but I'm not talking about the income. I'm talking  
5 about the fair rental value of a property. Do you make those  
6 distinctions about whether it sits empty or not?

7 A I mean, if there's demand, then the rental stays the same.

8 Q So your answer is it depends on demand.

9 A Right. It depends.

10 MR. TONG: Thank you. I have nothing further.

11 MR. TOSCHER: Just one further question, Your Honor.

12 RE-CROSS-EXAMINATION

13 BY MR. TOSCHER:

14 Q Mr. Molinari, you're familiar with the area.

15 THE COURT: Don't move the mike away.

16 BY MR. TOSCHER:

17 Q I think you testified before that Menlo Park was  
18 approximately 17 miles from the subject property?

19 A Give or take, I think.

20 Q Okay. And anybody who would be flying into the area for  
21 business, they either have to fly into the San Jose airport or  
22 the San Francisco airport; isn't that correct?

23 MR. TONG: Beyond the scope.

24 THE COURT: Beyond the scope. Sustained.

25 MR. TOSCHER: Thank you, Your Honor.

1 THE COURT: Okay. Anything more?

2 MR. TONG: No, Your Honor.

3 THE COURT: Then you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You may step down and leave the  
6 courtroom.

7 (Witness excused.)

8 THE COURT: And, Mr. Tong, who's your next witness?

9 MR. HARRINGTON: Your Honor, first we have -- we  
10 wanted to move some exhibits in evidence.

11 THE COURT: Okay. Go ahead.

12 MR. TONG: Your Honor, may I move this?

13 THE COURT: Yes. Please do. Thank you.

14 MR. TONG: Thank you.

15 THE COURT: So are you going to be reading from  
16 stipulations?

17 MR. HARRINGTON: Not this time.

18 THE COURT: Not this time. Okay.

19 MR. HARRINGTON: I think we're going to shortcut it  
20 because I spoke to defense counsel, and we've agreed to the  
21 authenticity of the business records that are contained in  
22 Exhibits 12-1 through 12-5. And then we're going to offer  
23 those evidence to be admitted into evidence.

24 THE COURT: Okay. 12-1 to 12-5.

25 Okay. Is there an objection?

1 MR. TOSCHER: No objection, Your Honor.

2 THE COURT: Okay. Then I will receive into evidence  
3 12-1 to 12-5.

4 Anything else?

5 MR. HARRINGTON: No, Your Honor. At this time we'll  
6 call Danielle Yanagihara.

7 (Witness photographed.)

8 THE CLERK: Please raise your right hand.

9 (Witness sworn.)

10 THE CLERK: Thank you. Please be seated.

11 Please state your name and spell your last name.

12 THE WITNESS: Danielle Yanagihara,  
13 Y-a-n-a-g-i-h-a-r-a.

14 DIRECT EXAMINATION

15 BY MR. HARRINGTON:

16 Q Good morning, Miss Yanagihara.

17 A Hi.

18 Q So let's start with a little bit of your background.

19 Could you please tell the jury about your educational  
20 background.

21 A I graduated from UH-Manoa in December 2006 with a degree  
22 in business administration in accounting and started working  
23 after that.

24 Q And are you a licensed CPA?

25 A Yes.

1 Q And how long have you been a licensed CPA?

2 A I think it was either 2009 or 2010 that I got my license.

3 Q And so where did you begin working after you graduated  
4 from college?

5 A KMH, LLP.

6 Q And is that still where you're working?

7 A Yes.

8 Q And I assume KMH are initials?

9 A Yeah, I think from the founding original partners.

10 Q And it's an accounting firm?

11 A Yes.

12 Q So what is your title at KMH?

13 A Tax manager.

14 Q And have you always been a tax manager, or did you start  
15 out at a different position?

16 A Started as staff.

17 Q Is that the full title? Are you staff accountant?

18 A Yeah, tax staff.

19 Q And so what does someone who's tax staff, what functions  
20 do you perform?

21 A Typically, they're tasked with preparing tax returns,  
22 gathering information from clients and stuff.

23 Q Would it be fair to say that you're the main contact at  
24 the accounting firm for collecting information?

25 A As a staff?

1 Q As a staff.

2 A Usually, actually, I think it's the in-charge or a senior  
3 that will be the main client contact, but the staff will have  
4 some dealings with the client, too.

5 Q Okay. And so when you're preparing a return, I guess  
6 what's the first step in the process?

7 A Typically, an information request is sent out to the  
8 client requesting information, such as financial statements and  
9 any other documents that we think we might need. And that is  
10 sent to the client. The client will respond and send the  
11 information to us. The staff will prepare a return based on  
12 the information given, go through and make sure we have  
13 everything we need. If there's any questions, either they will  
14 send it or they'll send it up to the senior on the engagement,  
15 and they'll send it to the client for follow-up. And then once  
16 the returns are prepared, the senior usually does a first-level  
17 review, and then a manager or supervisor does a second-level  
18 review, and then the partner or principal will do a high-level  
19 review.

20 Q So breaking that down one step at a time, you said there  
21 was a request for information from the client?

22 A Uh-huh.

23 Q Who would usually send that request?

24 A It will either be the staff or the senior, typically.

25 Q And then who receives the information from the client?

1 A Usually, the person who sends it; so either the staff or  
2 the senior.

3 Q And then who processes that information?

4 A The staff will normally do the initial process through.

5 Q And now the jury's heard from some other accountants; so  
6 correct me if I'm wrong, but do you usually take that  
7 information and put it into a computer program?

8 A Yes.

9 Q And so then what happens once that's processed through the  
10 computer program?

11 A So in our software for, like, company returns normally  
12 there's a finalized tax trial balance that we use, and that  
13 then gets imported into our other software to actually generate  
14 the tax returns.

15 Q And once those tax returns are generated, who does the  
16 first review of the tax returns?

17 A Well, we do ask staff to self-review their work first, and  
18 then the in-charge or senior will do the first-level review.

19 Q Now, you said the phrase "senior" a few times. Does that  
20 mean a partner, or could that just be senior staff?

21 A It's a senior associate; so, yeah, the next level above a  
22 staff.

23 Q And then after the senior looks at it, does the partner  
24 sign off on the return?

25 A Usually, we'll try to have a supervisor or manager also do



1 a second-level review before the partner or principal does the  
2 sign-off.

3 Q And how long does the partner spend reviewing the return  
4 on a typical corporate tax return?

5 A Maybe like an hour.

6 Q So did you work on any corporate returns for Waimana  
7 Enterprises?

8 A Yes.

9 Q Okay. And what year -- let's start -- let's say it this  
10 way: Which tax return was the first one that you worked on for  
11 Waimana Enterprises? Which year?

12 A The 2009.

13 Q And so would that be a Form 1120?

14 A Yes.

15 Q Now, was that a consolidated tax return?

16 A Yes.

17 Q So what does that mean that it's a consolidated tax  
18 return?

19 A So for the consolidated corporate return there's other  
20 subsidiaries that are wholly-owned by Waimana that were  
21 included in that reporting. So it included Sandwich Isles,  
22 ClearCom, Ho'opa'a Insurance, and Kekauluohi, I think was the  
23 last one.

24 Q It's okay. And so would that consolidated return reflect  
25 management fees between the companies?

1 A Yes.

2 Q And so if you were working on the 2009 return, does that  
3 mean that you were working on it in 2010?

4 A Yes.

5 Q And do you remember about when Waimana first became a  
6 client, what time of the year in 2010?

7 A Later during the year, like maybe August-ish.

8 Q August. Somewhere around August.

9 A Yeah, around August.

10 Q And when was the return actually filed?

11 A Around the September 15 deadline.

12 Q And now is September 15 the regular deadline, or is that  
13 an extended deadline?

14 A It's an extended deadline.

15 Q So what's the usual deadline for filing a corporate tax  
16 return?

17 A For calendar year, March 15.

18 Q So Waimana was a new client. And so was that a short  
19 period of time to prepare the tax return: between August and  
20 September?

21 A For their size company, yes.

22 Q So who owns Waimana Enterprises?

23 A At the time or currently?

24 Q Let's start with when they first became a client.

25 A Albert Hee.

1 Q And was he the hundred percent shareholder?

2 A Yes.

3 Q So the way you answered that question, it sounds like that  
4 may have changed?

5 A Yes.

6 Q Do you know when that changed?

7 A I don't remember the exact date.

8 Q Okay. Let me see if I can help you out with an exhibit.

9 So there's a binder in front of you. I'm also going  
10 to put things on the screen; so whatever is easier for you to  
11 see.

12 If we could go to 12-5. And it is going to be KMH  
13 2012 and page 240. And if we could blow up the top half there,  
14 please.

15 Again, if the screen's easier for you.

16 A Just look at that.

17 Q Okay. So would you recognize this as an e-mail that looks  
18 like maybe you printed, and it's an e-mail dated February 11,  
19 2013?

20 A Yes.

21 Q And it's from S.S. -- S. Sumida. Is that somebody who  
22 works at Waimana?

23 A At the time, yes.

24 Q And so it says there's an ownership change as of  
25 12/31/2012?

1 A Yes.

2 Q So this is the ownership change that you were talking  
3 about?

4 A Correct.

5 Q Before that date Mr. Hee was the hundred percent  
6 shareholder?

7 A Correct.

8 Q So when Waimana first became a client, did you start the  
9 regular process where you requested information from the  
10 client?

11 A I think just because of the shortened time span there  
12 wasn't really a formal information request. It was kind of  
13 just get everything at once as much as possible.

14 Q So you asked for as much as you could get at the time?

15 A Yeah.

16 Q So would you say -- would it be accurate to say it wasn't  
17 really a complete production of all the material you needed?

18 A Yeah. Yes.

19 Q So you had to file the return even though you hadn't  
20 received all the information?

21 A Correct.

22 Q And so when you're preparing the return, did you have any  
23 time to check all the underlying documents?

24 A No. I think we may have requested certain items, but by  
25 the time we received them or received answers to some of our

1 questions, there wasn't enough time to incorporate everything.

2 Q And so just to be clear, you were preparing the tax return  
3 for Waimana?

4 A Correct.

5 Q Were you performing an audit of Waimana?

6 A No.

7 Q Did you ever perform an audit of Waimana?

8 A No.

9 Q And so what was the process in 2010 for -- I'm sorry, for  
10 the 2010 returns? I guess it would be in 2011. Was it a  
11 similar process in preparing the return?

12 A Yeah, I think so.

13 Q Okay. And so let me clarify that a little bit. Did you  
14 find yourself in a time crunch in preparing the return in 2011  
15 as well?

16 A I believe not as bad, but a little bit, yes.

17 Q And so were you not able to obtain all the information you  
18 needed to prepare the return?

19 A Well, that and then this process -- the investigation had  
20 started; so I think we were thinking that there was a chance we  
21 would need to amend. So we, you know, did the best we could  
22 with what we had.

23 Q So when you say "amend," you're talking about filing an  
24 amended tax return after the other one was filed?

25 A Correct.

1 Q And so what about preparing the 2011 return in 2012? Is  
2 that the same process where there's a time crunch?

3 A Not as bad again. I think for 2011 there were just some  
4 last-minute changes that we had to kind of make it towards the  
5 end right before the deadline.

6 Q And so again were you not really presented with all the  
7 information you needed to do a complete tax return that you  
8 were confident in?

9 A I think we were aware that there were possible outstanding  
10 issues from this investigation; so again we kind of did the  
11 best we could with what we knew.

12 Q You said you became aware of some outstanding issues.  
13 Maybe we can talk about a few of those.

14 When did you become aware of the use of the Santa  
15 Clara property by Waimana?

16 A It was during the preparation of that 2011 tax return.

17 Q So that would be in 2012.

18 A During, yeah, 2012.

19 Q So what did you become aware of?

20 A That there -- the property was being rented and that two  
21 of the Hee children were living there.

22 Q Okay. So you weren't informed of this when you were  
23 preparing the 2009 tax return?

24 A No.

25 Q Or what about the 2010 tax return?

1 A No.

2 Q So the first time you found out about it was in 2012 when  
3 you were preparing the 2011 tax return.

4 A Yes.

5 Q So what did you do with the information that there had  
6 been some rental activity on the Santa Clara property?

7 A Just based on the timing to try to get the return done,  
8 and to be conservative, we recorded an adjustment to recognize  
9 the income -- the rental income, and we, I guess, disallowed or  
10 took out the expenses related to the property.

11 Q Do you remember if you learned about this on practically  
12 the day before the tax return was due?

13 A It was extremely close to the deadline.

14 Q So I want to show you another document. And this is --  
15 again I'm going to pull it up on the screen, but it may be --  
16 if you would also like, you can look it up in the binder.

17 And what it is is 12-2 KMH 209, and the Bates number  
18 is 569. And this is very small; so we're going to see if this  
19 blows up and you can read this better.

20 Miss Sorley, if we could get the bottom third of the  
21 page, please, and cut off the other part, and maybe we can  
22 actually read what this says. That looks a little better.

23 And so if you -- this is a chain of e-mails, and you  
24 see it's in 2010; so would that be the preparation of the 2009  
25 tax return?

1 A Yes.

2 Q If you look at entry number 6, there's a question. It  
3 says: Is WEI accruing interest income on account 13100 loan to  
4 stockholder? And there's an answer provided, No. Do you see  
5 that?

6 A Yes.

7 Q So is that a question that you asked of Waimana  
8 Enterprises to provide information on?

9 A Yeah, this was our, I guess, information request.

10 Q So the answer that was provided was no; is that right?

11 A Yes.

12 Q What does it mean to accrue interest on loan to  
13 stockholder?

14 A So, normally, for loans there has to be some sort of  
15 interest -- or there should be some sort of interest income and  
16 expense being recognized.

17 Q Okay. So a normal loan will always have interest that  
18 goes along with the loan, and that would be reflected in the  
19 books and records?

20 A Typically, and then I guess the IRS requires some sort of  
21 interest recognition.

22 Q Okay. And the answer you got was that that wasn't taking  
23 place at Waimana?

24 A Yes.

25 Q So we're talking again about, you know, requests for



1 information; so I want to show you another chain of e-mails  
2 from 2010. This is going to be exhibit -- I'm sorry, for the  
3 2010 returns; so this will be e-mails in 2011.

4 This is Exhibit 12-3. And the first one I want you  
5 to take a look at is KMH 2010, and it is Bates number 81. And  
6 just give me one second here.

7 Okay. So if we could zoom up on the top part of this  
8 page, please.

9 And so is this another e-mail that you received in  
10 September 2d, 2011?

11 A Yes.

12 Q And if we could actually now turn to page 83, please, of  
13 that same exhibit. And I'm sorry, if we could go -- let's go  
14 back to 82. I apologize.

15 I apologize the formatting's a little funny here, but  
16 this is how it was produced to us. So if we could zoom up on  
17 about the top half of the page, please.

18 And so this is -- it looks like an e-mail saying "I  
19 thought the questions looked familiar. Apologize. I thought  
20 this was sent a while ago."

21 Then if we could get to the bottom part of the page,  
22 please. And so it looks like there's a series of questions.  
23 And sometimes as we know in e-mails they get broken up a little  
24 oddly. But if you would review this and the next page, and do  
25 these look like requests for information that you had sent to

1 Waimana?

2 A Yes.

3 Q If we could turn to page 83, please.

4 And if we could zoom up on that top third where  
5 number 3 is, and there's a question. And the question is:

6 "Are personal expenses of shareholders/employees included as  
7 business expenses on the financials? If yes, attach a detailed  
8 schedule, including account numbers." Do you see that?

9 A Yes.

10 Q Is that a request for information that you sent to  
11 Waimana?

12 A Yes.

13 Q Okay. The response in that parentheses, is that the  
14 response you received from Waimana?

15 A Yes.

16 Q And it says, "Per Janeen. No, personal expenses are not  
17 being run through." Do you see that?

18 A Yes.

19 Q So based on that representation, you were given the  
20 impression that there were no personal expenses on the books of  
21 the company?

22 A Yes.

23 Q And who is Janeen?

24 A I believe she's the in-house counsel.

25 Q At Waimana?

1 A I'm not exactly sure which of the entities.

2 Q Okay. But for one of the Waimana entities?

3 A Yes.

4 Q Okay. And if we could please turn to -- this is going to  
5 be Exhibit 12-4 -- excuse me, 12-3. I apologize, 12-4.

6 And it's KMH 2011332. And if we could -- if we could  
7 go back one page, please, so we can see the beginning of the  
8 e-mail chain.

9 Okay. And if we could again zoom up at the top part.  
10 And this is a -- this is another e-mail that you received as  
11 part of your preparation, and it says 2012. It's for the 2011  
12 tax return?

13 A Yes.

14 Q And if you could turn to page 67, please. I apologize.  
15 Sorry. Hold on just one second.

16 Okay. Let me switch to a different topic. I don't  
17 want to continue on that topic.

18 So let me ask you about this. So when did you first  
19 become aware that children were receiving salaries from the  
20 Waimana entities -- the children of Mr. Hee were receiving  
21 salaries?

22 A I believe it was from counsel during this investigation.

23 Q So did you know about it in 2010 when you were preparing  
24 the 2009?

25 A No.

1 Q And what about in 2011?

2 A No.

3 Q In 2012?

4 A I can't remember when exactly we had that discussion.

5 Q But you didn't find out from the client. You said you  
6 found out from counsel?

7 A Yes.

8 Q And what about when did you learn that the wife of Mr. Hee  
9 was being paid a salary by the company?

10 A Same thing. During discussions with counsel.

11 MR. HARRINGTON: And if I could have just one moment,  
12 Your Honor.

13 (Counsel conferring.)

14 MR. HARRINGTON: I have no further questions at this  
15 time.

16 MR. TOSCHER: Your Honor, if we're going to break at  
17 noon, my preference is not to have my cross-examination  
18 interrupted.

19 THE COURT: My preference is you start.

20 MR. TOSCHER: Then I shall start.

21 May it please the Court. Ladies and gentlemen.

22 CROSS-EXAMINATION

23 BY MR. TOSCHER:

24 Q Good morning.

25 A Hi.

1 Q Now, you testified --

2 THE COURT: Now, why did you just do that?

3 MR. TOSCHER: I thought I was bringing it closer to  
4 me.

5 THE COURT: Okay.

6 BY MR. TOSCHER:

7 Q -- about the accrual of interest on a shareholder loan.

8 A Yes.

9 Q Under the Internal Revenue Code rules, if a company loans  
10 money to a shareholder and it's not documented at all, you're  
11 required to impute or accrue interest.

12 A Yes.

13 Q And the code -- actually, there's a code section which  
14 says, when there's a loan and there's no note and no interest  
15 stated, you're required to pick a certain rate; isn't that  
16 right?

17 A Yes.

18 Q And that's set forth in the regulations.

19 A Yes.

20 Q And if it's just -- if there's no term on it, you treat it  
21 as just a demand loan?

22 A Yes.

23 Q And it's -- demand loans now, what are the interest rates?

24 A I don't know exactly, but it's really low.

25 Q Very low.

1 A Yes.

2 Q So just so we're clear, where there's a loan from a  
3 stockholder -- I'm sorry, from a company to a shareholder and  
4 there is no note, the Internal Revenue Code provides for that  
5 situation.

6 A Yes.

7 Q And you impute that the small amount of interest we talked  
8 about.

9 A Yes.

10 Q The -- now, there was some testimony regarding you were  
11 learning about some issues during the course of the examination  
12 of the IRS, and I think you said there were some consideration  
13 of some amendments to the tax return.

14 A Yes.

15 Q And is it your normal policy that, when you spot these  
16 issues, if you're under examination, you would normally just  
17 hold back on any adjustments until the agent is complete?

18 A Yes.

19 Q And one of those adjustments you would have done would  
20 have been to accrue that interest on the shareholder loan.

21 A Correct.

22 Q Now, another adjustment you were considering was -- and I  
23 think you testified is to how to account for the rental income  
24 or the rental activity on the Santa Clara property.

25 A Yes.

1 Q Now, you testified that you were determining the amount of  
2 income and the amount of expenses, but then you were being  
3 conservative.

4 A Yes.

5 Q So I think -- is what you were saying is that, even  
6 accounting for whatever rent there was and the expenses, there  
7 was no taxable income to the corporation?

8 A Had we, I think, taken the rental income and the  
9 applicable deductions, there would have been no impact. But to  
10 be conservative we picked up the income and disallowed the  
11 expenses; so overall the company recognized a little bit of  
12 income on that rental for 2011.

13 Q Very small.

14 A Very small.

15 Q So you, actually -- if you had all the income and all the  
16 expenses, there would be no income, but you were very  
17 conservative and reported a small amount of income.

18 A Yes.

19 Q And that's because the audit was going on and you wanted  
20 to be overly conservative.

21 A Yes.

22 MR. TOSCHER: I have no further questions, Your  
23 Honor.

24 THE COURT: Mr. Tong, did you have anything more?

25 I'm sorry. I'm so sorry, Mr. Harrington.

1 MR. HARRINGTON: No, it's no problem at all.

2 THE COURT: We don't switch around here per witness;  
3 so go ahead.

4 MR. HARRINGTON: No, Your Honor. I don't have any  
5 further questions.

6 THE COURT: Okay. And Mr. Tong didn't either.

7 So you are excused, and you can leave the courtroom.

8 And we're going take a lunch break, and come back at  
9 1:15. Okay?

10 MR. HARRINGTON: Your Honor, our next witness we  
11 anticipate being really short; so I don't want to make the  
12 jury --

13 THE COURT: They might want to have a late lunch?  
14 Okay.

15 Well, why don't I let the witness go ahead and step  
16 down while we have this discussion.

17 (Witness excused.)

18 THE COURT: Let's get a time estimate. If it's  
19 really short, you may well want to just have a late lunch  
20 because then you'll be excused for the day, I think.

21 THE COURT: So, Mr. --

22 MR. HARRINGTON: I mean --

23 THE COURT: Okay. Mr. Harrington, that will be the  
24 only other witness for today; right?

25 MR. HARRINGTON: Yes.



1 THE COURT: Okay. Why don't you two confer.

2 MR. TOSCHER: Your Honor --

3 THE COURT: Hold on. I think there's a staff person  
4 who -- no. Did she want to give a note or -- no? Okay.

5 Go ahead.

6 MR. TOSCHER: Your Honor, Mr. Harrington has stated  
7 that he's not going to be very long. It's likely that I will  
8 not be very long. So it's up to the Court's discretion as to  
9 how she would like to do it.

10 THE COURT: So my question is what does "not very  
11 long" mean?

12 MR. HARRINGTON: I think a good estimate would be,  
13 for me, less than 10 minutes.

14 THE COURT: Okay.

15 MR. TOSCHER: 10 minutes.

16 THE COURT: Okay. So if you can stand it, we're  
17 going to barrel right through and see if we can let you go for  
18 the whole day.

19 Let's call the witness.

20 MR. HARRINGTON: Thank you, Your Honor. We call  
21 Deanna Awa.

22 (Witness photographed.)

23 THE CLERK: Please raise your right hand.

24 (Witness sworn.)

25 THE CLERK: Thank you. Please be seated.

1 Please state your name and spell your last name.

2 THE WITNESS: Deanna Kiemi Awa. Last name is spelled

3 A-w-a.

4 DIRECT EXAMINATION

5 BY MR. HARRINGTON:

6 Q Good morning, Miss Awa.

7 A Good morning.

8 Q So let's start with just a little bit of your background.

9 Where did you attend college?

10 A University of Hawai'i at Manoa.

11 Q What year did you graduate?

12 A 1992.

13 Q And what was your degree in?

14 A A bachelor's degree in both accounting and finance.

15 Q And so where did you work after you graduated?

16 A After I graduated I worked for Arthur Anderson, which is a  
17 public accounting firm.

18 Q And where did you work after Arthur Anderson?

19 A After Arthur Anderson I worked for a company called  
20 Fiberglass Hawai'i. And then after Fiberglass Hawai'i I worked  
21 at KMH.

22 Q And how long have you been working at KMH?

23 A I've been working at KMH, LLP, since 2004.

24 Q And what is your -- let's start in 2004. What was your  
25 position at KMH?

- 1 A At that point in time I was a senior manager.
- 2 Q And how long were you a senior manager?
- 3 A I was a senior manager until 2012.
- 4 Q Okay. And so what's your title now?
- 5 A Now I'm a principal.
- 6 Q So still at KMH, though.
- 7 A Correct.
- 8 Q And, in general, when you're preparing a tax return for a
- 9 client, do you rely on what the client tells you to be honest?
- 10 A Yes.
- 11 Q And when you're preparing a tax return, is that different
- 12 than what's conducted in an audit?
- 13 A Well, with regards to an audit we would, you know, request
- 14 information also from the client, and we would rely what the
- 15 client is providing is honest and truthful.
- 16 Q Either way you're relying on the client to provide honest
- 17 and truthful, accurate information?
- 18 A Correct.
- 19 Q But an audit you may be requesting more information?
- 20 A Depending on what the audit is, yes.
- 21 Q So did you ever work with a client called Waimana
- 22 Enterprises?
- 23 A Yes.
- 24 Q Okay. And what work did you do for Waimana Enterprises?
- 25 Was it an audit or was it just preparing the tax return?

1 A Initially, we were engaged to assist in the IRS audit, and  
2 then we were then engaged to prepare tax returns.

3 Q So the first step was to help engage in the IRS audit; so  
4 would that be helping provide information and that sort of  
5 thing to the IRS?

6 A That's correct.

7 Q So then you were engaged to prepare tax returns.

8 A Correct.

9 Q And when you sign an engagement with a client, you use  
10 what's called an engagement letter; is that right?

11 A Yes.

12 Q And the jury's seen several engagement letters; so I don't  
13 think I'm going to show them another one. But the main point  
14 of the engagement letter is that the client provides honest and  
15 accurate information?

16 A Correct.

17 Q So when you were preparing the Waimana tax returns, how  
18 much time did you have to complete those returns?

19 A The first year that we prepared the return was for the  
20 2009 tax year. I believe that we were engaged to prepare that  
21 return in August of 2010. And a corporate return, to the  
22 extent that it's extended, would be due in September; so,  
23 basically, about a month to prepare the return.

24 Q And was that a short period of time to try to collect all  
25 the information?

1 A It is a short period of time, yes.

2 Q So did you have a difficult time gathering information  
3 from Waimana?

4 A To the extent that we requested information, we got the  
5 necessary documents from the client. But through the process,  
6 obviously, there is some back and forth with regards to we have  
7 subsequent questions, and we ask additional questions and ask  
8 for more information, et cetera. And given the fact that we,  
9 basically, had about a month to prepare, you know, we had to  
10 finish up the return with the information that we got.

11 Q So I guess a better way of saying it is you had trouble  
12 getting enough information in time from Waimana.

13 A Correct.

14 Q And you said that was for the 2009 return. Was that the  
15 same case in 2010 -- for the 2010 return?

16 A If I recollect, yes.

17 Q What about the 2011 tax return?

18 A I do believe so. It was a short -- relatively short time  
19 period. I don't recall if it was exactly a month, but in  
20 general a pretty quick turnaround time.

21 Q What about 2012?

22 A I think it was probably the same, yeah.

23 Q Okay. Just one moment.

24 MR. HARRINGTON: No further questions, Your Honor.

25 THE COURT: Okay.

1 MR. TOSCHER: May it please the Court. Ladies and  
2 gentlemen.

3 CROSS-EXAMINATION

4 BY MR. TOSCHER:

5 Q Good morning.

6 A Good morning.

7 Q Can I ask for the publication of Exhibit 12-2, pages 590  
8 to 594.

9 Miss Awa, can you see that on the screen up there?

10 A I actually can't. I apologize.

11 Q Thank you very much.

12 This is in evidence. Do you recognize this as an  
13 engagement agreement between KMH, your company, and Waimana  
14 Enterprises?

15 A Yes.

16 Q Okay. And could you go to the second page, please. And  
17 could you highlight the first paragraph under the standards of  
18 preparers.

19 Now, I'm going to read it to you and just -- then I'm  
20 going to ask you a question of it just to be make sure.

21 It says: During 2008 Congress amended the Internal  
22 Revenue Code to enact the substantial authority doctrine for  
23 tax purposes. Now tax preparers need to believe that there is  
24 33 percent chance of success to be able to sign a return  
25 without additional disclosure. This is much more lenient than

1 the rules placed in 2007, which require a preparer to  
2 reasonably believe that there's a greater than 50 percent  
3 chance that a reported position was proper.

4 Now, are you familiar with this part of your  
5 engagement agreement, Miss Awa?

6 A Yes.

7 Q And you are familiar with the IRS rules underlying this  
8 part of your engagement agreement?

9 A Yes.

10 Q And what you're trying to communicate is that, as long as  
11 there's a one-out-of-three chance that you will ultimately be  
12 held to be right, you're allowed to that position on the  
13 return; isn't that right?

14 A That's correct.

15 Q You don't have to be a hundred percent sure.

16 A That's correct.

17 Q You don't have to be 50 percent sure.

18 A That's correct.

19 Q Just one out of three.

20 A Correct.

21 Q And then you avoid any civil penalties; is that correct?

22 A That's correct.

23 Q Okay. Now, you were questioned by Mr. Harrington  
24 regarding you mentioned KMH's involvement during the audit, and  
25 you testified as to the return preparation process. But let's

1 focus on the return preparation process.

2 I think you testified that throughout there was back  
3 and forth, but the taxpayer always provided you all the  
4 information you requested?

5 A That's correct.

6 Q Were they completely cooperative throughout all the  
7 process of preparing the returns?

8 A Yes.

9 Q Did they ever try to conceal anything from you?

10 A No.

11 MR. TOSCHER: I have no further questions, Your  
12 Honor.

13 THE COURT: Okay.

14 RE-DIRECT EXAMINATION

15 BY MR. HARRINGTON:

16 Q Just want to refer again to what Mr. Toscher was talking  
17 about. This is talking about what a taxpayer needs to believe;  
18 right?

19 A Correct.

20 Q So that's what you need to believe when you're preparing a  
21 return.

22 A Correct.

23 Q And that's relying on the client giving you accurate  
24 information.

25 A Correct.



1 Q So what that's talking about is your obligations, not what  
2 the client is supposed to do; is that correct?

3 A That's how I would interpret that.

4 MR. HARRINGTON: Okay. Thank you.

5 MR. TOSCHER: No further questions, Your Honor.

6 THE COURT: Okay. Then the witness is excused. You  
7 may step down and leave the courtroom.

8 And that's it for today; is that right?

9 MR. HARRINGTON: Yes, Your Honor.

10 THE COURT: The jurors are extremely disappointed  
11 because they were seriously looking forward to a full day.

12 But you're excused for the day. And remember that we  
13 don't have -- you can go ahead.

14 (Witness excused.)

15 THE COURT: We don't have trial on Mondays; so the  
16 next time I will see you will be at nine o'clock next week  
17 Tuesday morning, and at that point we'll have a new witness on  
18 the stand. Okay?

19 So leave all your notebooks on your chairs. Remember  
20 not to read, listen to, or look up anything about this case.

21 (Jury excused.)

22 THE COURT: Can I talk for a few minutes with the  
23 attorneys about schedule.

24 Is the government able to give me any kind of  
25 estimate on when the government's case in chief might end?

1 MR. TONG: May I have one moment, Your Honor?

2 (Counsel conferring.)

3 MR. TONG: Your Honor, I would estimate that we would  
4 be done by Wednesday. Two more days.

5 THE COURT: Okay. And I know they're not done yet;  
6 so I know you can't commit to what you might be thinking about  
7 putting on as a defense. But are you able to give me a rough  
8 estimate based on what we have so far?

9 MR. TOSCHER: It would be rough, Your Honor. I  
10 just -- I'm trying to think if -- let's see, number of our  
11 days?

12 THE COURT: Yes.

13 MR. TOSCHER: I think maybe three to five.

14 THE COURT: Okay.

15 MR. TOSCHER: I'm just not -- I'm really not sure yet  
16 as to -- we've been moving very quickly.

17 THE COURT: I'm just trying to figure out when I need  
18 to resolve jury instructions. We can wait a little on this.

19 Okay. I mean, depending. So, for example, if all  
20 the evidence closed on next week Friday, just for example --

21 MR. TONG: Your Honor, I think that's the 3d of  
22 July.

23 THE COURT: I'm sorry, 3d of July, yeah. Then it  
24 just so happens Monday, July 6th, is pretty full for me. We  
25 might let the jurors have a day off and do jury instructions on

1 Tuesday, the 7th, maybe. Then we could have closing and  
2 deliberate for the rest of the week. We might get a verdict  
3 then by the 10th. I don't know, but just possibly.

4 It's not unusual for me to settle jury instructions  
5 at the end of a trial day and just we all stay late and do  
6 that. Sometimes because I often will do some things off the  
7 record, too, we can possibly come in on a weekend. Although, I  
8 hesitate to use that July 4th weekend. There's all kinds of  
9 things, but I have some -- first, I promised to perform a  
10 wedding. That's one thing.

11 Second, actually, and the more important, I actually  
12 was hoping to keep that free because I have a funeral service.  
13 My cousin was the woman who was killed not too long ago in an  
14 auto accident while she was driving. So we have -- there are  
15 things I would like to pay attention to over the week. But,  
16 anyway, sometimes I do do that, and, you know, we can talk  
17 about that next week as we go further into the week and figure  
18 out what we need to do.

19 Okay. I just wanted to get a sense.

20 Thank you. I will see you next week Tuesday,  
21 June 30, nine o'clock.

22 (Court adjourned at 12:13 P.M.)

23

24

25

1 COURT REPORTER'S CERTIFICATE

2 I, Debra Kekuna Chun, Official Court Reporter, United  
3 States District Court, District of Hawaii, do hereby certify  
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,  
5 true, and correct transcript of the stenographically reported  
6 proceedings held in the above-entitled matter and that the  
7 transcript page format is in conformance with the regulations  
8 of the Judicial Conference of the United States.

9 DATED at Honolulu, Hawaii, August 2, 2015.

10

11

/s/ Debra Chun

12

DEBRA KEKUNA CHUN

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RPR, CRR

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